FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**MAN/00BN/HNA/2021/0011 and 0012**
Property	**:**	**92 Barton Road, Eccles, Manchester, M30 7AE**
Applicants	**:**	**Fiona Baines and John Baines**
Respondent	**:**	**Salford City Council**
Represented by	**:**	**Mr P Whatley of Counsel**
Type of Application	**:**	**Appeals against Financial penalties- Section 249A and Schedule 13A to the Housing Act 2004**
Tribunal Members	**:**	**John Rimmer** **Colin Snowball** **John Faulkner**
Date of Decision	**:**	**27 June 2022**

Date of Determination: 25 August 2022

DECISION

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Decision : **The Tribunal is satisfied that for the reasons set out herein the Applicants have committed an offence under Section 234(3) Housing Act 2004 and should each pay a financial penalty of £500.00**

Background

(1) The Tribunal has received appeals from the Applicants against one financial penalty imposed against each of them under section 249A of the Housing Act 2004. The relevant procedures for imposing financial penalties and appeals against them are set out in Schedule 13A of that Act. Both section 249A and Schedule 13A have been inserted into the Housing Act 2004 by section 126 and Schedule 9 of the Housing and Planning Act 2016.

(2) Those penalties relate to a housing offence that the local housing authority considers to have been committed in respect of the property at 92, Barton Road Eccles. Those offences are the same in respect of each of the Applicants, namely breaches of management regulations applicable to houses in multiple occupation (HMOs) being offences under Regulation 4 – duty of manager to take safety measures.

(3) After completing the process for determining the imposition of penalties the Respondent concluded that the appropriate amount in respect of the offences was £7,250.00 in respect of each of the applicants.

(4) This appeal is by way of a re-hearing of the local housing authority's decision to impose those penalties and the amounts in question, but it may be determined having regard to matters of which the authority were previously unaware.

(5) When deciding whether to confirm, vary or cancel the final notice imposing the financial penalty, the issues for the Tribunal to consider will or may include:

(i) Whether the tribunal is satisfied, beyond reasonable doubt, that the applicant's conduct amounts to a "relevant housing offence" in respect of premises in England (see sections 249A(1) and (2) of the Housing Act 2004);

(ii) Whether the local housing authority has complied with all of the necessary requirements and procedures relating to the imposition of the financial penalty (see section 249A and paragraphs 1 to 8 of Schedule 13A of the 2004 Act).

(iii) If the appeal relates to more than one financial penalty imposed on the applicant, whether or not they are in respect of the same conduct and/or-

(iv) Whether the financial penalty is set at an appropriate level, having regard to any relevant factors, which may include, for example:

(a) the offender's means,

(b) the severity of the offence,

(c) the culpability and track record of the offender,

(d) the harm (if any) caused to a tenant of the premises,

(e) the need to punish the offender, to deter repetition of the offence or to deter others from committing similar offences; and/or

(f) the need to remove any financial benefit the offender may have obtained as a result of committing the offence.

(6) The Tribunal may have regard to any official guidance relating to financial penalties (also known as "civil penalties") that may be published from time to time by the Secretary of State for Housing, Communities and Local Government, but the Tribunal is not to be bound by such guidance when making its decision.

(7) The parties are referred to the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 for guidance on how the application has been dealt with.

(8) During the process of making a reapplication for a HMO licence in respect of the property, which hitherto had been duly licenced as providing 8 rooms (the licence having varied between 8 and 9 as to the permitted number of occupiers, depending on the composition of one particular household) an inspection was carried out by responsible officers of the Respondent on 9th March 2020.

(9) In the course of this inspection the officers identified what they considered to be a number of issues having particular relevance to fire safety provision within the building, sufficient, in due course, for them to consider and then apply a financial penalty in respect of each of the Applicants against which they both now appeal. The length of time taken to this point having been caused by the onset of the Covid pandemic and the lockdowns imposed from only a few days after the inspection of the property.

(10) The Tribunal notes that this is the second appeal arising out of the same inspection. There has been shared responsibility for the management of the building between the Applicants in this case and

a company acting as managing agent that has already engaged in an appeal process relating to a financial penalty it had received.

(11) The Tribunal also notes that there has been no suggestion from any party that the two Applicants are to be treated differently. It appears to be common ground that they are both have equal responsibility in respect of the management of 92, Barton Road and both would share the consequences of any failing in that regard.

The law

12. The regime for imposing a financial penalty, or penalties, is set out in section 249A of the Act as an alternative to criminal proceedings in respect of one or more relevant housing offences.

13. There are a significant number of offences that fall to be considered as relevant housing offences, but that with this which Tribunal as concerned is that identified by the Respondent for the purposes of imposing financial penalties against which the Applicants bring this appeal. They relate to an offence in respect of HMOs.

14. Sections 72, 95, and 234(3) of the Act refer specifically to the offences of operating an unlicensed HMO (section 72), operating a house that is unlicensed but is required to be licensed (section 95) and offences against HMO management regulations (section 234(3)). As mentioned above it is this latter provision upon which the Respondent relies in order to impose the penalty.

15. Of specific relevance to the Tribunal's deliberations are:

Regulation 4(1)(b)

The manager must ensure that all means of escape from fire in the HMO are... maintained in good order and repair

And regulation 4(4)

The manager must take all such measures as are reasonably required to protect the occupiers of the HMO from injury, having regard to-

(a) The design of the HMO
(b) The structural conditions in the HMO; and
(c) The number of occupiers in the HMO

Submissions and evidence

16. Both the Applicants and the Respondent provided bundles of documents, appropriately paginated, for the assistance of the Tribunal, with subsequent additions where appropriate. They provided extensive

information that proved to be of assistance during the course of the hearing held by a video hearing platform on 27th June 2022.

17. Significant within the bundles were the details of the inspection carried out by Ms Protano and Mr Condron. Both officers provide witness statements as to what was seen and there is photographic evidence supplied in support.

18. The inspection was carried out in response to an application by the Applicants to renew the existing HMO licence in respect of the building which had been granted for a period of 5 years from 21st October 2014.

19. The inspection revealed a number of deficiencies within the building, not all of which related to fire safety provision but those that did in due course became the core element of the notices to impose the financial penalties. They were found to constitute breaches of regulation 4 of The Management of Houses in Multiple Occupation (England) Regulations 2006. This regulation specifically sets out the duty of the manager (and others) to take safety measures in respect of the occupation of the building.

20. Those defects which crystalised within the notices were:

- Gaps exceeding 4mm between the doors and frames of four rooms- the ground floor kitchen, the first-floor shared kitchen and bedsits A and F.
- Escape route doors wedged open on the ground floor leading to the bathroom and kitchen areas
- No smoke detection or intumescent vent to the washing machine storage room
- Bedsit A, no overhead self-closing device and door frame splintered
- Bedsit H, unclipped overhead self-closing device
- Ground floor escape route obstructed by bicycles and wooden materials
- The door handle from the stairwell to the ground floor bathroom area was loose and insecure
- A missing section of intumescent strip to second floor kitchen below a redundant perco
- A hole in the ceiling of bathroom D and openings in the ceilings of the ground and second floors
- Insecure door handle to bedsit G

21. Thereafter further consideration to the matter of the defects was given by the Respondents and following the issue of a notice of intention to impose a financial penalty upon each of the Applicants, subsequent representations upon that course of action and a final determination from the Respondents a final notice was provided to each Applicant in an amount of £7,250.00. A copy of the final notice may be found at

pages 135 onwards in the Respondents bundle, that being the notice relating to Mrs Baines.

22. Although nothing in this decision turns upon the point, the Tribunal does feel that it should draw the attention of the Respondent to certain irregularities in the notices. See, for example, the notice, containing two paragraphs numbered 4 and the first of such misidentifies the property in respect of which the offences occurred as being the Applicants' residence not the HMO. Notwithstanding those errors the Applicants have not been misled, but they should be avoided.

23. The Respondent determined the penalties according to the matrix that formed a part of its overall policy relating to the imposition of financial penalties whereby it considered the culpability of the Applicants and the likely harm that could have flowed from the defects as both being at the medium level.

24. On the matrix this produced a mid-point within the appropriate band of £16,500.00 from which £2,000.00 was deducted to represent the co-operation given by the Applicants to the investigation and the steps already being taken to remedy the matters identified in the inspection. As the Respondent viewed the Applicants as bearing joint responsibility for the situation the amount of £14,500.00 was apportioned equally between them.

25. It is the appeal by both Applicants against those notices, both on the ground that no relevant offence had been committed and also that if one was found by the Tribunal to have been committed the penalties were excessive, with which the tribunal now concerns itself.

26. It has been no part of the case provided by any of the parties that there should be any differentiation between the Applicants as to how they have been considered by the Respondent or should be by the Tribunal.

27. Although these matters relate to matters identified during an inspection that took place well over two years ago the difficulties created by the Covid pandemic and subsequent commitments of the parties, their representatives, or witnesses has prevented final consideration of the matter until this point.

Submissions and evidence

28. As matters such as that before the Tribunal proceed by way of rehearing of the Respondent's case Mr Whatley was invited to set out the case against the Applicants. He did by way of a resume of the history of the matter and drawing the Attention of the Tribunal to the core concerns of the respondent relating to the state and condition of the fire doors within the building, to which could be added the concerns relating to the holes in ceilings, the lack of fire protection in

the washer room and the obstructions to the corridor to be used as an escape route.

29 The view taken by the Respondent was that the defects which caused concern could and should have been identified by a better and more comprehensive system of inspection than that evidently carried out by the Applicants, otherwise they would have been found prior to the inspection. Mr Whatley noted that there was no documentary evidence available to show the frequency and thoroughness of such inspections as were carried out, either by the Applicants, or the managing agents.

30. The assessment of the culpability of the Applicants in allowing the situation to have arisen was therefore considered to be at the medium level.

31 The relationship of the defects to the integrity of fire safety provision to the building could have resulted in the assessment of the risk resulting from the failures as high, but there was always the presence of a working and effective fire alarm system that considerably reduced that otherwise high risk to a medium level.

32. It was clear to the Respondent that co-operation from the Applicants with the Respondent's enquiries and the steps taken after the inspection to remedy defects, including some that were identified, but did not form any part of the process leading to the financial penalty, warranted some steps to mitigate the penalty of £16,500.00 reflected by the penalty matrix. This was the mid-point in band 4 of the matrix: that which reflected medium culpability and medium harm. To reflect this mitigation a reduction if £2.00.00 was made.

33. Again, Mr Whatley re-iterated the Respondent's view that where there were joint parties to receive the penalty the final amount should be apportioned between them; equally in the absence, of any suggestion of greater culpability on the part of one than the other.

34. The Applicants challenged the views of the Respondent on its interpretation of the findings of the inspection to the extent of concluding that no offence had been committed. Those challenges were as follows:

- A number of the defects identified were a result of tenants' actions over which the Applicants had little control despite regular inspections being carried out by the Applicants and their agents:
  - The wedging of escape route doors on the ground floor
  - The interference with door closers in two of the bedrooms
  - The splintering of the bedroom door.

35. Other issues were similarly ones that could not reasonably have been identified if the system and timescale of inspections carried out by the Applicants or their agents was to be regarded as reasonable, which the Applicants considered to be the case. They would have arisen at times between those inspections, or would otherwise have been put right

- The bicycles in the downstairs corridor
- The issues with light fittings in the bedrooms that were now loose or missing
- The loose door handles to two bedrooms.

36. The Tribunal spent some considerable time considering photographs produced at the time of the inspection to ascertain whether or not there was clear evidence of any obstruction of the route to the fire exit by the items in question.

37. The Applicants also explained that the light fittings ought no longer to be considered an issue as subsequent work had revealed that they were of a type that although not themselves fire resistant they were fitted into an intumescent sheath that remained in place so as to prevent the passage of smoke into roof and joist spaces.

38. One hole in the ceiling of bedroom D was the result of leak that the Applicants had not been made aware and would have been repaired in the ordinary course of events.

39. Additionally, the bicycles and wooden materials stored on the ground floor were not in an area that formed part of the escape route and should not be considered a risk to use of the route.

40. More complex arguments were put forward in relation to the issues identified with the intumescent strips and seals affixed to the doors referred to in the notice, whilst accepting that the section of missing strip on the door to the second-floor kitchen.

41. The Tribunal was able to explore in some detail with Ms Protano and the Applicants how the gaps between door frames and door were measured, with the assistance of a wedge device demonstrated by Ms Protano. The combination of LACORS guidance and the HM Government Fire Risk Assessment Guide for Sleeping Accommodation was then applied so that gaps should not exceed 4mm in the frame and 8mm at the door opening. In the absence of that compliance the smoke resistance was determined to be compromised and danger from smoke considerably increased.

42. The Applicants challenged this approach on three separate grounds to suggest that no offence had been committed. Firstly, the doors had satisfied previous inspections of the property and no alterations had been made to them to suggest gaps having been altered. To the

Applicants this suggested that it was reasonable to rely upon previous inspections indicating satisfaction with the smokeproofing. Further, it was suggested that the investigations carried out at the inspection were too subjective in their nature to establish clear evidence of any defects that showed clear breaches of guidelines and effective means of measuring relevant gaps.

43. The second argument put forward was that the LACORS guidance was only one set of guidance applicable to the situation at 92, Barton Road. Reference was made to the HM Government Fire Risk Assessment Guide for Sleeping Accommodation which makes specific reference to its application to common parts of HMOs. The Tribunal's attention was drawn particularly to Appendix B and the technical information contained therein.

44. Whilst stressing the point that a gap of 2-4mm between the door leaf and the frame for timber fire-resisting doors larger gaps may be necessary to ensure the door closes flush into its frame when smoke seals have been fitted, the Applicants pointed that when a Fire Officer from the local fire service attended subsequently at the request of the Applicants he limited his observations in respect of the doors to the need to obtain a further fire risk assessment and to act upon it.

45. Although such an assessment was obtained, and as pointed out by Mr Whatley again refers to the 2-4mm recommendation, there was no suggestion from the Fire Officer that there was any need to go beyond obtaining that assessment and take further immediate steps because of the nature of the gaps alleged.

46. Thirdly, the Applicants also engaged in extensive correspondence with the Respondent as to the efficacy of a product called Envirograf which apparently satisfies the appropriate British Standard and has now been accepted as sufficient to secure smoke protection at the door seals. During the installation of this product on one of the doors found to exceed the 4mm gap the installer had to increase a gap that failed to provide a 3.5mm gap for the installation. the guidance suggests larger gaps may be necessary to enable doors to fit securely within their frames if intumescent strips or other protective measures had been applied to a particular door. They also refer in page 184 of their bundle to the guidance suggesting larger gaps may be required to ensure door closure.

47. The further matter of the fire safety provision to the laundry room was also considered at some length. It was always accepted by the Respondent that an alarm was fitted in the passageway immediately outside the room. The inspection suggested strongly to the Council that further and better provision needed to be made to vent smoke from the room itself in the event of fire. Subsequent further enquires and discussions between the Applicants, the Respondent and the Fire

Service for some time after the inspection appeared to result in some difference of opinion as to the merit of further provision over and above the detector.

48. In the light of that circumstance the Respondent indicated that it did not seek to rely on the situation, as perceived at the inspection, as forming any further part of the case against the Applicants.

49. At the conclusion of consideration of the submissions made by the parties the Tribunal retired to consider one particular matter that had been raised by the Applicants on a number of occasions during the course of the proceedings.

50. As has been mentioned above (in paragraph (10) of the background) there has been a previous prosecution of the managing agents in respect of the same inspection and the findings of the Respondent's officers. The Applicants sought to rely upon the relationship with the agents and the agreement with them as to the inspection of the property to clarify what their responsibilities had been when compared with what the manager should have been conducting and discovering by way of inspection.

51. The Applicants had not sought to produce any copy of any relevant management agreement. After canvassing the view of the Respondent through Mr Whatley the Tribunal, with some reluctance, considered that an opportunity should be given to the Applicants to provide this. It should not be automatic that such an opportunity should be given, even to unrepresented parties, but the Tribunal was of the view that in dealing with matters essentially of a criminal nature the Applicants should be provided with the opportunity of producing any relevant agreement.

52. The Applicants were not, however, able to provide a copy of any service level agreement between themselves and Barlow White Limited. They did however provide copies of a number of other documents relating to other properties and the obligations in relation to service provision suggestive, in conjunction with their evidence during the hearing, of responsibility falling on Barlow White for internal inspection of rooms (with the exception of Room G) and falling on the Applicants in respect of the common parts.

The determination

53. It is clear to all parties and the Tribunal that in order for there to be a situation in which a financial penalty, or penalties may be imposed under the provisions of Section 249A of the Act there must be a relevant offence or offences. That which was found by the Respondents related to Regulation 4 of the Management regulations

54. Although the Tribunal is not a court exercising a criminal jurisdiction it is nevertheless considering whether a criminal offence or offences have been committed. As such those offences must be established to the criminal burden of proof, whereby the Tribunal is so satisfied that it is sure that the Applicant has committed any particular offence.

55. As the party suggesting that offences have been committed by Mr and Mrs Baines, the Council, in making its decision to impose financial penalties, must satisfy that burden of proof, initially to itself and then to the Tribunal if an appeal is brought. The Tribunal conducts a rehearing, the burden does not shift to the Applicant to establish that no offence has been committed.

56. The Tribunal must therefore consider the evidence in relation to each of the elements found at the time of the inspection and upon which the Council seeks to rely to establish the offence(s) upon which the financial penalties are based (with the exception of the issue in relation to the washing machine storage room which the Respondent no longer pursues). The Tribunal will consider them as set out below.

57. <u>The gaps between the doors and door frames exceeding 4mm</u>

The Tribunal is satisfied that Ms Protano, using a device designed for the purpose, measured gaps that exceeded 4mm on a number of separate occasions. The Tribunal is also satisfied that the Applicants, when seeking to have a product called Envirog if installed found that there should be their joiner had to plane one door in particular to increase the gap to 3.5mm recommended for installation of the product.

58. The Tribunal is able to reconcile these separate findings by reference to the inclusion of the word "recommended" in the guidance suggesting no less than a 2mm gap and a 4mm gap. The guidance is not absolute, and Mr and Mrs Baines make a very strong point that the LACORS guidance and its reference to the government's fire risk assessment guide for sleeping accommodation envisage situations where a hard and fast rule is not required.

59. It is acknowledged that when Mr Carter later conducts his fire risk assessment, he also refers to the 4mm guidance. The Tribunal is, however, concerned with the establishment of a criminal offence, or offences. They are those identified in paragraph 14 above. The Tribunal asks itself if the bare findings of Ms Protano, even if accurate, serve to evidence beyond reasonable doubt that one or other, or both, of those offences have been established. Without anything further the Tribunal is of the view that it cannot be sure that it does.

60. Doors from the bathroom area and kitchen to the ground floor escape route wedged open

There is a disagreement between the parties as to whether these doors are fire doors or not. The Tribunal is of the view that they are given what is said by the Respondent about the plans of the layout, their relevance to access to the escape route from rooms where a fire might start and their fitting with intumescent strips.

61 The concern for the Tribunal is that neither Mr Condron, nor Ms Protano, in their witness statements refer to this particular issue. They are both silent on the point. It is however raised in both the notice of intent and the final notice (see page 151 of the respondent's bundle). The Tribunal is not prepared to assume that because all the parties now deal with the issue it must have been present at the time of the inspection. It is a fire door, but the view of the Tribunal is that in the absence of further evidence it may amount to a defect insufficient to hamper any necessary escape.

62. The disconnected self-closers in rooms A and H and splintered frame to room A

These are matters of concern in the context of an HMO. The Tribunal takes the view that primary responsibility for failing to remedy the problems falls with Barlow White Ltd in view of the likely division of responsibility between that company and the Applicants. The Tribunal is, however, concerned that the situation only came to light on the occasion of the inspection when a clear defect is also noted to the door frame of room A and there appears to be a disconnection between the internal room inspections by Barlow White and the inspection of common parts by the Applicants.

63. The Tribunal accepts what the inspection revealed on the day, but is not satisfied that in the context of responsibility for safety in this property the findings are sufficient to support proof of criminality on the part of the Applicants.

64. Ground floor escape route obstructed by bicycles and wooden materials

These items (the wooden material being a bookcase) were considered by the Tribunal in the context of what constituted the escape route. There is an alcove area beside the staircase. The items, on examination of the photographic evidence, were primarily within the alcove, which the Tribunal does not consider to be part of the escape route, but he bicycles protruded significantly into the passage way to the fire escape. They are significant items and in the dark and/or smoke affected situation would present a hazard to potential escapees. The Tribunal is sure that this is a breach of the obligation under regulation 4(1)(b) to keep means of escape in good order.

65. Missing section of intumescent strip to door to second floor kitchen

The Applicants accept this finding from the inspection and offer no satisfactory explanation. It has clearly been missed. Its significance in relation to a room that offers potential fire risk, a kitchen, having access to an escape route is indicative of a breach of Regulation 4(1)(b).

66. Holes/defective light fittings in bathroom and in two ceilings

These defects are identified in common parts of the building, for which the Applicants accept responsibility for inspection. They are clearly apparent on the photographs supplied. They would, at first consideration offer means for smoke to escape into other areas of the building through the ceiling spaces.

67. The Applicants have continued to stress that subsequent investigation indicates that the two defective light fittings have intumescent hoods, so that even if the fitting is loose/missing smoke and fire will be retarded by the hoods. No specific evidence is produced by the Applicants in support of this assertion, nor was any further investigation carried out at the time of the inspection, or afterwards, to ascertain with any precision what danger any penetration through the holes would create and how that might be mitigated by any measures in the ceiling space.

68. The Tribunal's view is that to simply observe the holes is not always sufficient without some further assessment of the danger they present. The Applicants do not raise the matter of the intumescent strips in their responses to the preliminary notice, so the respondent cannot address this at the time. Nevertheless, the Applicants appear to the Tribunal to be honest and truthful people who do not exaggerate their position and accept that there have been shortcomings. It would have been better if knowledge of the hoods had been found earlier and some further evidence provided. Equally once raised the Respondent could have sought such evidence or made a further inspection. Such evidence as is now presented to the Tribunal does not convince it of any guilt on the part of the Applicants

69. The position in relation to the hole in bathroom D is different. This is stated by the Applicants to be the result of a leak. They assert that it has been missed at an inspection. The Respondent accepts this and suggests a more effective inspection regime would have found it. There is no subsequent suggestion of any ameliorating discovery that would prevent this hole admitting smoke, or heat to the floorspace. The Tribunal takes the view that unlike the holes around defective light fittings, the evidence here is conclusive of a hazard that should have been remedied, but its continued existence is in breach of regulation 4(4).

70. <u>Loose and insecure door handles to bedroom G and from the ground floor bathroom area</u>

There is no suggestion that these door handles are defective or prevent closure of the doors in question, but the obligation under regulation 4(1)(b) is to maintain them in good order as they relate to a means of escape from fire. In the absence of any clear answer to why they are loose and for how long the Tribunal relies on the findings of the Respondent's officers. They were not in good order and the regulation has been breached

71. The Tribunal is therefore in the position that it has found defects to have been established with sufficient clarity for it to consider that they are established beyond reasonable doubt as being breaches of one of two subsections of Regulation 4:

1) The obstruction of the ground floor escape route
2) The missing intumescent strip on the second-floor kitchen door
3) The hole in bathroom D
4) The door handles to one-bedroom G and ground floor bathroom area
5) The Wedged door on the escape route
6) The defective self-closers
7) The splintered door to bedroom H

They thus establish the commission of a criminal offence on the part of each Applicant under Section 234(3) of the Housing Act 2004 and can be the subject of the imposition of a financial penalty under Section 249A of the Act.

72. For the reasons set out above the Tribunal is not satisfied that those other matters relied upon by the Respondent to evidence support for the finding of the commission of an offence are sufficiently made out and the Tribunal does not rely upon them

73. Having established that there is sufficient evidence to show that a housing offence has been committed by each Applicant, the Tribunal should reconsider the public interest test to ascertain if it is appropriate for a financial penalty to be imposed as a means of dealing with them, all the more so since the Tribunal's view of the evidence has reduced whatever pressure that there might have been to effect a prosecution. It is necessary to apply the relevant guidance relating to the consideration of prosecution or other penalty.

74. This can be found in the Code for Crown Prosecutors and should act as a guide for all public bodies considering prosecuting of a criminal offence, there is clearly here some element of culpability of the part of the Applicants and some element of risk of harm to occupiers of the building. It is not sufficient given the circumstances that prosecution

should take place, but there is an element of wrongdoing that should be reflected in appropriate steps to mark the misconduct. Within the regime for dealing with housing offences that is the imposition of a financial penalty

75. Having taken that decision the Tribunal notes that the Respondent relied upon the policy determined by the Association of Greater Manchester Authorities relating to financial penalties (pages 41 onwards in the said bundle) to assess the culpability for and likely harm resulting from the offence in order to fit the offence(s) into a matrix which spreads the range of financial penalty from £1 to £30,000.

76. The Tribunal here takes a different view, based upon different relevant evidence, to assesses the culpability of the Applicants as being low. It accepts that there have been failings, but considers that against a background of continued compliance with the licensing of the HMO, an inspection regime that hitherto met with no Council objection and the Tribunal's view that it does not equate a small number of oversights and missteps with negligence so extensive as to place it in a higher category. Low culpability is a sufficient level at which to acknowledge the Applicants errors. The Tribunal has also noted in its earlier comments that in relation to the obstruction of the escape corridor there is every likelihood of tenant involvement, or collusion in the placing of the cycles, and interference with door closers.

77. Similarly the Tribunal assesses the risk of harm as low. It notes that the Respondent, quite correctly, took a serious view of the risk of fire, but noted the continuing presence of a satisfactory working alarm system to reduce any risk to a medium level. The Tribunal considers the risk from fire here is low insofar as it may arise from those defects it has found to be sufficient to establish offences. The bicycles do not present the sort of obstruction that is often considered in the context of breaches of Regulation 4. They are likely to provide some limited impediment to escape rather than anything more serious.

78. The Tribunal adopts the same view in relation to the hole in bathroom D and the missing intumescent strip from the kitchen door. In the context of the state and condition of the building the likely contribution that these defects will make to the risk from fire will be low.

79. If a starting point is taken as the mid-point in the appropriate band (which is band 1) then the appropriate amount is £2,500.00. It is proper to give the Applicants credit for their previous good record, the assistance they gave to the Respondents enquiry and steps taken to ameliorate identified defects, as also reflected in the Respondent's original determination, and the amount should be reduced to £500.00.

80. The Tribunal does note that in reaching its original conclusion that it should split one financial penalty between two joint recipients, hence a penalty of £14,500.00, the Respondent was sure that was the correct course of action. Since then the Upper Tribunal has decided the case of Gill and Gill v Royal Borough of Greenwich [2022 UKUT 26 (LC)] where Martin Rogers QC considered this position at some length and was of the view that joint recipients of penalties should each receive the full appropriate penalty. This tribunal has followed that view and, indeed, considers it to be in line with the way in which criminal liability is penalised.

Tribunal Judge J R Rimmer
27 June 2022