FIRST-TIER TRIBUNAL

PROPERTY CHAMBER

(RESIDENTIAL PROPERTY)

Case reference	**:**	**CAM/34UB/HNA/2022/0020**
Property	**:**	**41 West Glebe Road, Corby, Northants NN17 1EL**
Applicant	**:**	**Mr Pavle Manojlovic (1) and Mrs Spomenka Manojlovic (2)**
Representative	**:**	**Ms Lara Hicks - Counsel**
Respondent	**:**	**North Northamptonshire Council (the Council)**
Representative	**:**	**Ms Rachel Coyle - Counsel Mr B Agnew Private Sector Enforcement Officer for the Council**
Type of application	**:**	**Appeal against a Financial Penalty**
Tribunal member(s)	**:**	**Judge Dutton Mr C Gowman MCIEH MCMI BSc**
Venue	**:**	**By video on 5 December 2023**
Date of decision	**:**	**12 December 2023**

DECISION

DECISION

The tribunal determines that the Financial Penalties imposed against both Applicants stand at £4,050 each to be paid within 28 days of the date this decision is sent to the parties or such longer period as is agreed with the Council. The reasons for the Tribunal's determination are set out below.

BACKGROUND

1. This application seeking to appeal against a financial penalty imposed on both Applicants, Mr and Mrs Manojlovic, by North Northamptonshire Council (the Council) was made by the applicants on 21 October 2022. This relates to their alleged failure to comply with an Improvement Notice dated 23 December 2021 in respect of 41 West Glebe Road, Corby, Northants NN17 1EL (the Property).

2. On 30 August 2022 a Financial Penalty Final Notice in the sum of £4,050 was imposed on both Applicants, for the reasons stated in the Final Notice, *"The financial penalty for failing to comply with the provisions of an improvement notice…"*. The notice went on to set out the basis upon which the penalty had been assessed.

3. Before the hearing, which was held by video on 16 November 2023, we had been provided with two bundles, one on behalf of the Applicants running to some 376 pages and one on behalf of the Council running to some 262 pages. There was a good deal of duplication. In addition, we received skeleton arguments from Ms Hicks on behalf of the Applicants and Ms Coyle on behalf of the Council. We are grateful to both Counsel for this assistance.

4. Within the bundle were three statements from Barry Patrick Agnew a Private Sector Housing Enforcement Officer with a number of exhibits attached. These statements were dated respectively, 21 June 2022, 30 August 2023 and 5 September 2023. We also had a statement from Mr Manojlovic dated 29 September 2023. We shall return to these statements, as necessary, in due course.

5. There were a number of documents that related to the Improvement Notice. These included a report from Platinum Preservations Limited relating to the alleged damp and mould at the Property. We were also in possession of an electrical installation condition report for the Property dated 23 October 2021 which said "*The installation is in a good condition apart from some areas that need addressed* ", which were then referred to.

6. Briefly the facts are these, largely taken from Mr Agnew's statements, and in so far as the chronology is concerned not in truth disputed by the Applicants. On 22 September 2021 Mr Agnew was contacted by Home Start (Corby), a community-based support group, bringing to his attention a complaint made by Shirley Smith the Applicants long standing tenant. She had been a tenant since May 2009. As a result, Mr Agnew inspected the property on 23 September 2021 and as a result, sent to the Applicants on 5 October 2021 a schedule of works he required to be undertaken by 12 November 2021 on a voluntary basis to avoid a more formal approach. There followed exchanges of emails relating to the production of documentation, which is not strictly of relevance to this application.

7. On 17 December 2021 Mr Agnew contacted the tenant concerning the works and she responded three days later with an indication as to what had been done and when. She also raised, although without any supporting documentation, that she was suffering from anxiety related to Mr Manojlovic working on the gas and electric at the Property, alleging that previously his worked had caused an "explosion" from behind the fire. She also alleged that her children had missed school due to repeated cold/flu symptoms and chest infections.

8. On 23 December 2021 Mr Agnew, under the provisions of s239 of the Housing Ac t 2004 (the Act) returned to the Property, it seems carried out an HHSRS assessment and on the same day issued an Improvement Notice setting out works required, which included a number of category 2 hazards but also a category 1 hazard relating to excess cold, which in turn led to a category 2 hazard of damp and mould growth. The category 1 hazard stemmed from the non-functioning central heating system.

9. There are a number of email exchanges between the Applicants and Mr Agnew concerning the difficulties the Applicants had in completing the works and seeking and being granted extensions of time. It is said that on 29 April 2022 Mr Agnew emailed Mr Manojlovic asking if the works had been completed. It is said that there was no reply. Subsequently Mr Agnew contacted the tenant and was advised that the works were not completed in that there were still problems with the heating/hot water and the damp ion the children's bedroom. She said that the Applicants were often abroad. On 9 June 2022 Mr Agnew reinspected the Property and made certain findings as set out at paragraph 25 of his June 2023 statement.

10. As a result, it was decided that a Notice of Intention be issued to both Applicants, which was done on 12 July 2022, giving them until 11 August 2022 to make any representations. The applicant, Mr Manojlovic replied by email dated 4 August 2022, raising issues with regard to his daughter's well being and that he would investigate and attend to the issues raised within the next 28/56 days. Mr Agnew

responded on 10 August 2022 in an attempt to ensure the Applicants appreciated the seriousness of the situation. It is not clear that they did for on 30 August 2022 a Final Notice was issued confirming the penalty at £4,050 for each applicant for the reasons stated therein and giving the Applicants until 30 September 2022 to make payment.

11. As we indicated above the application to appeal the Notice was not made to the tribunal until 21 October 2022, out of time. However, Judge David Wyatt, after inviting representations, allowed the appeal under the provisions of rule 6 of the Tribunal Procedure Rules 2013.

12. Mr Agnew produced the Council's matrix setting out how he had calculated the penalty to be imposed. This calculation was verified by his peers and the Initial Notice and Final Notice subsequently issued.

13. The matter came for hearing by video on 5 December 2023 and was attended by those named on the front page of this decision.

HEARING

14. Ms Coyle opened the case for the Council and took us through the chronology as set out in the statements from Mr Agnew. She confirmed that the Council considered both Applicants to be culpable and hence the two penalties.

15. Mr Agnew was tendered for cross examination by Ms Hicks, relying as he did on his three statements, which we have read and noted the contents. He confirmed that Ms Smith had been a tenant for some 12 years at the time she raised the problems with Home Start and that she had not made any previous complaints that he was aware of.

16. On questioning from the tribunal, he confirmed that he tried to act even handedly and that he served between 6 and 7 Improvement Notices each year.

17. He accepted that by 17 December 2021 a substantial amount had been done and that he had no dealing with Mrs. Manojlovic. He was referred to the report from Platinum Preservations Limited but considered there was still work to be done such as set out in the bullet points in the report. He told us that he tends to engage with parties and will agree extensions in time for works to be done as he had in this case. He thought the Applicants had been co-operative but had not completed the works in the Improvement Notice when he reinspected in June 2022.

18. He confirmed he had searched the Land Registry property register and the Council tax register and found that both applicants were recorded as owners of the Property.

19. He was then asked about his assessment of the penalty by reference to the Council's matrix which was at pages 236 – 243 of the Applicants' bundle. We carefully noted the contents. He confirmed that his calculations had been verified by Laura Walker his manager.

20. In respect of the severity of the offence he scored this as severity level 3 as there was a failure to adhere to a notice. This gave a penalty of £600 for each applicant.

21. In respect of the culpability and harm as to the first he concluded that it fell into severity level 2 which included medium offences committed through act or omission which someone exercising reasonable care would not commit. This gave a penalty of £300.

22. Turning to the harm element he assessed the harm to the tenant at level 2 offences that present a serious risk of harm to the tenant. This gave a penalty of £500 on the Council's matrix.

23. The next band was punishment/deterrent. The Applicants fell into severity level 1 which included a wide band of property ownership, from 1, where the Applicants by agreement sit, to 20 properties. This results in a liability of £2,800 being 2 times the sum of the penalties in the earlier bands. The possibility of no multiplier applying does not fall for consideration as the Applicants have achieved levels of above 1 for the headings, although it is accepted that this is a first offence.

24. Finally, the question of financial gain. This is intended to remove any financial benefit to the Applicants that they may have obtained by committing the offence of failing to comply with the Improvement Notice. This was calculated on the basis of the monthly rental of £600 over a six-month period, which has been assessed at £1,250 for each applicant. Adding these sums together led to the financial penalty sought of £4.050 for each applicant.

25. We then heard from Ms. Hicks, who tendered Mr. Manojlovic for cross examination. He had produced a witness statement dated 29 September 2023 at pages 278 – 283 of the Applicants' bundle. We noted all that he had said. There were a number of exhibits attached which were somewhat repetitive of those produced by Mr Agnew. There was also some medical evidence of his daughter's problems but in a number of cases this was in Croation without any translation. To be fair to Mr. Manojlovic he did not make anything of his daughter's difficulties, hopefully now resolved, at the hearing.

26. He told us that the tenant Shirley Smith had lived at the Property since 2009 and that there is no tenancy agreement. The rent has not increased much since she moved in, by some £100 a month and then, it

seems without warning she stopped paying the rent, apparently for a year, when the Council took on the responsibility.

27. The statement goes on to challenge some of the findings that justified the Improvement Notice, but no appeal was made in respect thereof.

28. We were provided with details of the health issues affecting his daughter and the time and expense they had incur in dealing with those matters.

29. Mr. Manojlovic suggested that the Property should be achieving a monthly rental of £1,000. He asserted that the works had been completed to the satisfaction of the tenant by September 2022.

30. In evidence to us he confirmed that he and his wife owned one other property, the one they lived in. He denied he had any property abroad, which appeared to be suggested by Ms. Coyle. He said that they were not experienced landlord's although it appears he had owned a rental property before. He confirmed that the rental income was paid into his wife's bank account. The rent received, direct from the Council was £600 per month and his mortgage payment in respect of the Property was £597.92 per month. He told us, without any supporting documents that his income was circa £17,000 per annum net and his wife's around £12,000. He had no idea as to the value of the property in which they lived.

31. He confirmed that for a year the tenant had failed to ay any rent. He had sought professional advice but as there was no written tenancy agreement, he believed it might have been difficult to evict the tenant and her family. Asked why he had not responded to the Council's initial letters concerning the works to the Property he said he did not know how to respond, and his language difficulties caused issues.

32. We then heard submissions from Ms Hicks and Ms Coyle. Ms Hicks questioned whether Mrs Manojlovic should have received the same penalty as all contact had by Mr Agnew was with Mr. Manojlovic. He was not a rogue landlord she said, and he had not tried to avoid his responsibilities. This was the only property they rented, and the tenant had given no warning of the issues which led to the Improvement Notice.

33. She reminded us that Mr Agnew had said that Mr Manojlovic had been cooperative, and suggested that the Council's behaviour was heavy handed and not proportionate or just. There was no statement from the tenant concerning harm.

34. Ms. Coyle referred to her skeleton argument and that the main focus should be on the period between the issue of the Improvement Notice and the issue of the final notice in respect of the Civil Penalty. There were problems at the Property which constituted Category 1 hazards which were not addresses in a timely fashion. The Applicants did not appeal the Improvement Notice. No invoices were disclosed to show the works done and nor were any documents disclosed to show the financial status of the Applicants nor problems the Applicants had allegedly suffered from Covid.

35. She accepted that this was a first offence but that the assessment of the penalty followed the Council's matrix and was not unreasonable. The penalty must be a deterrent and should be imposed on both Applicants, who are co-owners and equally responsible.

FINDINGS

36. We have considered the statements made by Mr Agnew and Mr Manojlovic. We heard from both at the hearing and noted the contents of the skeleton arguments provided by Ms Hicks and Ms Coyle.

37. This is not an appeal against the imposition of the Improvement Notice, the time for that has long since gone. Much time was spent on the contact Mr Agnew had with the Applicants, the work required under the Improvement Notice and the delay in competing that work. We are satisfied that the Improvement Notice included a Category 1 Hazard linked to the misfunctioning central heating. This was not addressed as speedily as it should have been. The Applicants were afforded a number of extensions in time to complete the work required under the Improvement Notice but failed to deal with the issues for several months.. On Mr Manojlovic own case it does not seem that all works were completed until September 2022, which is nearly 12 months after the initial contact with Mr Agnew.

38. We are satisfied, beyond reasonable doubt that the Applicants have failed to comply with an Improvement Notice, which was validly issued, and that as a result the imposition of a Financial Penalty is reasonable and proportionate. The Improvement Notice is dated 23 December 2021, and the Final Notice was not issued until 30 August 2022. Even then the Applicants had to rely on the tribunal's discretion to proceed with this appeal, which was out of time.

39. Should the penalty be against both Mr and Mrs Manojlovic? We heard that they are joint owners of the Property and jointly appear on the Council Tax register. Further we heard that Mrs Manojlovic receives the rent into her bank account. Although Mr Manojlovic was the person in contact with Mr Agnew, all notices, both the initial and the final one

and the Improvement Notices were sent to both and at no time has either said the other has no responsibility. We accept that Mr Manojlovic appears to have accepted the role as manager of the Property but there is no real differentiation between the Applicants and Mrs Manojlovic receives the rent into her account. In those circumstances we are satisfied that a penalty can be imposed on both Applicants.

40. As to the level of the penalty we have borne in mind the Upper Tribunal decision in Sutton v Norwich City Council [2020] UKUT 90 (LC) where the Tribunal considered the weight that should be given to a local housing authority's civil penalty policy in determining the appropriate level of penalty to be imposed by a tribunal. In Sutton, at [245], the approach was summarised as follows: "*If a local authority has adopted a policy, a tribunal should consider for itself what penalty is merited by the offence under the terms of the policy. If the authority has applied its own policy, the Tribunal should give weight to the assessment it has made of the seriousness of the offence and the culpability of the appellant in reaching its own decision".*

41. We had taken Mr Agnew through the matrix that the Council relied upon. This required the Council to consider the severity of the offence, the culpability and track record of the offender, the harm caused to the tenant, the punishment, deterrence and the removal of a financial benefit. We were supplied with the matrix used and the assessment of the penalty to be imposed. We could find no error in the way the matrix was applied nor the level of severity which was attributed to each element. There had been, in our finding, proper differentiation between each band although we question the grouping under punishment/deterrent of severity at level 1 for owners of between 1 – 20 properties. That seems to us not to differentiate sufficiently between the "amateur" landlord and the more professional landlord with a larger property portfolio. Be that as it may there is provision for this element to be reduced if all scores for culpability and harm are at 1 and it is a first and single offence. These do not apply in this case.

42. Having considered the banding and the assessment of severity, bearing mind that the Category 1 Hazard was not dealt with appropriately, we find that the penalty assessed at £4,050 for each Applicant is proportionate, reasonable and an appropriate application of the matrix.

43. We therefore find that each applicant is required to pay a financial penalty of £4,050, such sum to be paid within 28 days or such other longer period as is agreed with the Council.

Judge Dutton 12 December 2023

ANNEX – RIGHTS OF APPEAL

1. 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 at the Regional Office which has been dealing with the case.
2. 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.
3. If the application is not made within the 28-day time limit, such application must include a request to 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.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (ie 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.