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

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| **Case reference** | : | **LON/00BH/HNA/2025/0625** |
| **Property** | : | **100 & 100A Turner Road, London E17 3JQ** |
| **Applicant** | : | **Stephen Kramer** |
| **Representative** | : | **Richard Tacagni MCIEH CEnvH** |
| **Respondent** | : | **London Borough of Waltham Forest** |
| **Representative** | : | **Sharpe Pritchard LLP Solicitors (Simon Kiely)** |
| **Type of application** | : | **Appeal against a financial penalty** - Section 249A & Schedule 13A to the Housing Act 2004 |
| **Tribunal member(s)** | : | **Judge H Carr** |
| **Venue** | : | **10 Alfred Place, London WC1E 7LR** |
| **Date of decision** | : | **18th June 2025** |

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**DECISION**

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**Decision of the tribunal**

(1) The tribunal determines to confirm the financial penalties in the agreed, combined amount of £11,400 (or £5,700 each).

(2) The tribunal makes the determinations as set out under the various headings in this decision.

## The application

1. The applicant is appealing against the imposition of financial penalties by the respondent, the London Borough of Waltham Forest.

2. The financial penalties were imposed for offences under section 95(1) of the Housing Act 2004 ie failure of a person having control of or managing a property which is required to be licenced but is not so licensed.

3. The financial penalties imposed by the Final Notice are as follows:

    (i) 100 Turner Road - £7600

    (ii) 100A Turner Road - £7600

4. The properties are two self contained flats within a terraced house converted into two flats.

5. The Applicant is the leasehold owner of one of the flats, 100 Turner Road. The leasehold owner of 100A Turner Road is Fedelma Margaret Kramer, however the Applicant is the person shown as the owner of 100A Turner Road on the Council's Council Tax database and it is agreed he is the person in control or management of the property.

6. Directions were issued on 25th March 2025 and amended on 7th May 2025. The directions decided that the matter be determined on the papers and without a hearing. The parties were given an opportunity to request a hearing but no such request has been made. Therefore this determination proceeds on the basis of the papers provided.

## The hearing

7. The tribunal received the following documentation which it has read and taken into account in reaching its decision.

    (i) A bundle from the Respondent dated 29th April 2025 and comprising 299 pages

    (ii) A bundle from the Applicant dated 27th May 2025 and comprising 70 pages

(iii) A response to the Applicant's bundle from the Respondent dated 10th June 2025 and comprising 4 pages.

**The background**

8. The Respondent Council has had a selective licensing designation over some or all of its Borough since the 1st April 2015 to the effect that anyone privately renting out a property is required to hold a licence under Part 3 of the Housing Act 2004 to lawfully rent out their property.

9. The initial selective licensing designation expired on 31 March 2020. The replacement selective licensing designation came into force on 1 May 2020 and covers all wards in the Council's Borough excluding the Endlebury and Hatch Lane Wards.

10. The subject properties are located in the Wood Street Ward. The Applicant held licences for each of the Properties under the Council's initial selective licensing scheme both of which expired on 31 March 2020. Licence applications were not received by the Respondent until 2 November 2023.

11. On 2 February 2021 the Respondent wrote to the Applicant separately in relation to each of the properties informing him that he needed to apply for a new licence if the properties were still being rented out. This letter informed the Applicant that failure to obtain a licence was an offence under the Housing Act 2004 and could result in either a prosecution and a fine of an unlimited amount, or the imposition of a financial penalty of up to £30,000 as an alternative to prosecution.

12. On 9 February 2021, the Applicant created an account on the Council's property licensing database and provided an email address of stephen@sklc.co.uk. However, the Applicant did not apply for a licence for either of the properties at this time.

13. Kevin Langan inspected both properties on 27 April 2023 and found them both in occupation and being rented out without either a licence under Part 3 of the Housing Act 2004 being in place, or an application for a licence under Part 3 of the Housing Act 2004 having been made.

14. Licence applications were not in fact received until 2 November 2023

15. Kevin Langan wrote to the Applicant by email to stephen@sklc.co.uk about the need to licence the Properties on several occasions: 4 October 2022, 2 May 2023 , and 11 May 2023.

16. On 23 October 2024, the Council's Service Manager signed off 2 legal reports for the properties approving the recommendations made by Catherine Lovett that the Applicant should be issued with 2 civil financial penalties in the amount of £9,500 as an alternative to prosecution in respect of his failure to licence both of the Properties

17. On 27 October 2024, the Council sent 2 notices of intention to issue financial penalties in the amount of £9,500 to the Applicant due to the Applicant having failed to ensure that the properties were licensed under Part 3, Section 95(1) Housing Act 2004.

18. The notices were sent to the Applicant by first class post on 27 October 2023. The notices were also emailed to the Applicant at stephen@sklc.co.uk on 27 October 2023 at 17:00. The Applicant opened and read those emails at 17:39 and 17:42 respectively.

19. Both the notices and the accompanying covering letters outlined the Applicant's right to make representations about the intention to impose each of the penalties within a 28-day period. The covering letters also explained that if the Applicant applied for a licence for the property within the representation period, that the penalty would be reduced by 20%.

20. The Applicant sent three separate emails to the Council on 30 October 2024, 1 November 2024, and 2 November 2024 each from his email address stephen@sklc.co.uk.

21. The emails were taken, collectively, by the Respondent to amount to representations. The Council sent responses to the Applicant's representations some 11 months later on 1 October 2024 upholding the decision to impose a civil penalties, although confirming that the level of those penalties would be reduced by 20% as a result of the licences having, by then, been applied for.

22. On 5 November 2024, the Council sent final notices of its decision to issue financial penalties to the Applicant in respect of each the properties in the amount of £7,600 to the Applicant by first class post.

## The issues

23. The Applicant accepts that he committed a selective licensing offence by delaying his selective licence renewal application. Constructive dialogue between the parties has resulted in the Tribunal being concerned with two narrow issues only:

(i) Was the notice of intent to impose the penalty out of time, making the penalty notice invalid?

(i) Whether the service of the final penalty notices over 12 months after the notice of intent was given breached the Applicant's right to a fair hearing within a reasonable time under Article 6 of the Human Rights Act?

24. During these proceedings the Applicant's Representative confirmed to the Respondent that if the Applicant was unsuccessful on these grounds then the Applicant would accept that the penalty notices would be confirmed in the agreed, combined amount of £11,400 (or £5,700 each).

## The determination

## Was the notice of intent to impose the penalty out of time?

## The Applicant's argument

25. The Applicant says that the date of offence was 27th April 2023. The notice of intent was dated 27th October 2023 which the Applicant says is one day late.

26. The Applicant says that in connection with 100 Turner Road E17 3JQ, Kevin Langan, Licensing Enforcement Officer with the Respondent, visited the property on 27 April 2023, spoke to a tenant, and obtained a copy of the tenancy agreement confirming that the Applicant was the landlord and naming the two tenants. Although Mr Langan's witness statement refers to subsequent checks at Companies House, the Applicant argues that this was of no material relevance to the offence as the penalty notice was served on the Applicant as an individual.

27. In respect of 100A Turner Road E17 3JQ, Mr Langan, visited the property on 27 April 2023 and spoke to a tenant who confirmed she rented the property from the Applicant.

28. The Applicant argues that Mr Langan provides no evidence of any offence beyond 27 April 2023. His witness statements dated 6 October 2023 mention no further visits to the properties and no further contact with anyone living there. There are no witness statements from any occupants.

29. The Applicant also draws on the witness statement from Catherine Lovett, the team manager in the Respondent's private sector Housing

and Licensing Team. In that statement at paragraph 7 she explains the date of offence as 27th April 2023. This is confirmed by the two legal reports. The Applicant also points out that there is a sentence underlined in those reports – Last date for summons/financial penalty: 27th October 2023.

30. The Applicant then draws attention to the notices of intent to impose civil financial penalties on both properties which are dated 27 October 2023. Both notices of intent state the date of offence was 27 April 2023. For 100 Turner Road, the date is clearly stated in the covering letter and the schedule accompanying the notice of intent. For 100A Turner Road, the date is clearly stated in the covering letter and the schedule accompanying the notice of intent.

31. The Applicant notes that it is accepted by both parties that both notices of intent were sent to the Applicant by first class post and by email on 27 October 2023.

32. In relation to sending the notices of intent by email, the Respondent provides no evidence the Applicant had indicated to the local housing authority their willingness to receive electronic documents in the form and manner used, as required under section 247(3) of the Housing Act 2004.

33. In relation to sending the notices of intent by post, Section 7 of the Interpretation Act 1978, states: "Where an Act authorises or requires any document to be served by post (whether the expression "serve" or the expression "give" or "send" or any other expression is used) then, unless the contrary intention appears, the service is deemed to be effected by properly addressing, pre-paying and posting a letter containing the document and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post."

34. The Applicant argues that whilst the Royal Mail's performance target is to deliver 93% of first class post within one working day of collection, during the relevant period (2023/24), Royal Mail only delivered 74.5% of first class post within one working day.

35. In this case, the notice was sent by first class post on Friday 27 October 2023. With less than three quarters of first class post delivered within one working day, this suggests delivery in the ordinary course of post equates to Monday 30 October 2023 as there is no postal service on Sundays.

36. Returning to the timeline for giving a notice of intent, Schedule 13A, para 2(1) of the Housing Act 2004 states: "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."

37. In drafting the legislation, Parliament determined the six-month period starts on the first day on which the Respondent had sufficient evidence of the offence. Mr Langan's witness statements make clear 27 April 2023 was the date he visited both properties and gathered his evidence.

38. The Applicant differentiates the drafting of Schedule 13A Housing Act 2004 from how the Corresponding Date Rule is normally applied. Schedule 13A does not say the time limit for serving a notice of intent is six months 'after' the relevant date. It uses more precise language. It states the six-month period begins with the first day on which the authority has sufficient evidence of the conduct to which the financial penalty relates, while the conduct is continuing and within 6 months beginning the last date on which the conduct occurred.

39. In relation to Schedule 13A para 2(1), the Applicant contends that the first day is 27 April 2023. With a start date of 27 April 2023, we contend the six month period ends on 26 October 2023.

40. The Applicant draws on the Upper Tribunal decision in *Tze Moh v Rimal Properties Ltd* [2024] UKUT 324 (LC) to make three points

(ii) Firstly, at para 27, Upper Tribunal Judge Elizabeth Cooke confirms only whole days count for the purposes of Rent Repayment Orders under the Housing and Planning Act 2016. We maintain the same principle applies here, especially as Schedule 13A was inserted into the Housing Act 2004 by the same legislation.

(iii) Secondly, at paras 36 to 40, Judge Elizabeth Cooke provides guidance on calculating time periods. The critical part is at para 38. Judge Elizabeth Cooke does not accept the corresponding date rule applies when looking at a period of time ending on a specific date. She therefore concluded that a 12 month period ending on 4 May 2023 starts not on 4 May 2023 but on 5 May 2023. The circumstances in this case are similar, but in reverse. The requirement in this case is to calculate a six month period starting on 27 April 2023. By following the same logic, the six month period ends on 26 October 2023 and the notices of intent were given out of time.

(iv) Thirdly, and finally, at para 68, Judge Elizabeth Cooke states: "I therefore agree with the FTT which

said: "If there is any ambiguity, we should lean in favour of the potential offender" (paragraph 62 of the Jerome House decision, paragraph 54 of the Reighton Road decision)." The Applicant asks that the Tribunal adopt a similar approach in this case if the Tribunal consider there is any ambiguity about what Parliament intended

41. Whilst the Applicant accepts that a local authority can impose a financial penalty for a continuing offence under Schedule 13A, para 2(2) of the Housing Act 2004, the Respondent has produced no evidence of a continuing offence. The investigating officer says the offence occurred between 6 October 2022 and 27 April 2023. He produces no evidence of occupancy beyond that date. The legal report prepared by his manager refers to an offence on 27 April 2023 and notes they had six months from that date to take enforcement action. The notice of intent and final notice both refer to the date of offence being 27 April 2023. It would be against natural justice, and against the intention of the legislation, to allow the Respondent to vary and/or seek to extend the offence date(s) stated in the notice of intent once an appeal has been lodged.

42. Without evidence of occupancy on any later date, the Applicant contends a continuing offence cannot be proved to the criminal standard of proof, and nor has this been intimated by the Respondent.

43. Further, the Applicant contends that it is not for the Tribunal to undertake it own investigations to determine whether the Respondent could have inserted a different offence date, or range of dates, when the notice of intent was drafted in October 2023. The Respondent could have withdrawn the notices of intent and issued amended notices within the statutory time limit. They did not take that course of action. The only notices of intent are those exhibited by the Respondent.

**The Respondent's response**

44. The Respondent asserts that both notices were given in time.

(i) Firstly, sch.13A para 2(2) Housing Act 2004 makes it clear that where the person is continuing to engage in conduct, that a notice of intent may be given at any time when the conduct is continuing or within 6 months beginning with the last day on which the conduct occurs. It is settled law that failure to licence offences under the Housing Act 2004 are continuing offences (*Luton v Altavon* [2019] and *Mohamed v Waltham Forest LBC* [2020] applied). On the facts, no applications were received to licence either of the Properties until 2 November 2023 – as such, and

notwithstanding that the offence dates shown on the respective legal reports were stated to be 27 April 2023, the offences clearly continued until 2 November 2023. On that basis, the notices of intent given on 27 October 2023 were given in time.

(ii) Secondly, and without prejudice to the foregoing, it is asserted that even without the wording under para 2(2) to sch.13A Housing Act 2004, the Council still gave notice to the Applicant before the end of the period of 6 months beginning with the first day on which the Council had sufficient evidence of the conduct to which the financial penalty relates, provided for in para 2(1) of sch.13A Housing Act 2004. As per *Radcliffe v Bartholomew* [1892], and *Marren v Dawson Bentley & Co Ltd* [1961], it is settled law that for the purposes of calculating time limits the day on which a cause of action arises or an offence is committed is to be excluded in calculating a limitation period. On that basis, as the Council had sufficient evidence of the conduct to which the financial penalties related upon undertaking the 2 property inspections on 27 April 2023, the period of six months provided for under para 2(1) of sch.13A Housing Act 2004 began on the following day and expired on 27 October 2023.

(iii) Furthermore, it is also clear that the Council properly gave notice to the Applicant on 27 October 2023 by sending the 2 notices to him by way of emails sent to him at 17:00 hours, and which were opened and read at 17:39 and 17:42 hours respectively. The Respondent points out that this is not a case of 'service' under the Civil Procedure Rules, whereby certain actions must be completed in prescribed manner and by a prescribed time on a prescribed day. S.233 Local Government Act 1972 makes it clear that where any enactment requires a local authority to 'give' a 'notice' to any person, that it may be so given by 'delivering' it to them, or by leaving it at their proper address, or by sending it by post. Delivering a notice does not therefore require a notice to be delivered in the post, but simply, and in accordance with the ordinary meaning of the word, to be delivered to that person. On the evidence it is clear that the notices were delivered to the Applicant by email on 27 October 2023. Furthermore, the facts also show that the Applicant opened and read those emails on that day, and therefore had notice of the

Council's intention to impose the financial penalties on that day as well.

45. In response to the Applicant's reference to the Upper Tribunal decision in the case of *Tze Moh v Rimal Properties Ltd* [2024] UKUT 324 (LC) the Respondent argues that the case deals with an entirely different enforcement regime, namely the rent repayment order regime under the Housing and Planning Act 2016, and deals with a time limit that is worded completely differently from that under sch.13A 2(1).

46. S.41(2) Housing and Planning Act 2016 provides that an application for a rent repayment order must be made only where the "offence was committed in the period of 12 months ending with the day on which the application was made". The method of calculating this time limit is therefore back to front when compared to the method for calculating the time limit under sch.13A: here the time limit is calculated with reference to a period ending on a specific date, whereas the time limit under sch.13A is calculated with reference to a period beginning on a specified date. The instant case is therefore entirely distinguishable from the case of *Tze Moh*.

47. In response to the Applicant's argument that, "the Respondent provides no evidence that the Applicant had indicated to the [Respondent] their willingness to receive electronic documents … as required under section 247(3) of the Housing Act 2004", the Respondent argues that the Applicant has overlooked the evidence contained within Exhibit KL6 at pages 253 to 281 of the Respondent's Bundle. That evidence demonstrates that when making a previous licence application, the Applicant not only provided their email address but also ticked a box to indicate that email was their preferred contact method. On that basis, and bearing in mind that section 247(4) of the Housing Act 2004 further provides that an indication of willingness to receive documents transmitted in a particular form need only be 'general', and 'may be modified and withdrawn at any time', it is asserted that notwithstanding that the email address provided by the Applicant in this earlier licence application is not his current email address (and in this regard it is further asserted that the Applicant must have updated/modified his preferred email address, as his current email address of stephen@sklc.co.uk is shown in the licensing database printout exhibited as Exhibit KL9 at page 226 of the Respondent's Bundle) that this amounts to sufficient indication of not just a willingness to receive documents by email, but in fact a preference to do so.

48. Furthermore, the Respondent would highlight the decision of Martin Rodger KC, the Deputy President of the Upper Tribunal (Lands Chamber), in the case of *Sutton v Norwich City Council* [2020] UKUT 90 (LC) in relation to service by email in Housing Act 2004 cases. At paragraph [135] of the Judgment, the Deputy President outlines that in that case, ten notices of intent that had been sent to the applicant by the

local authority on 11 June 2018 had also been sent to the applicant as attachments to emails on that date too. At paragraph [138] of the Judgment, the Deputy President then found that, "whether or not [the applicant] chose to open the attachments to [the local authority officer's] email of 11 June 2018 … there was good service on him of the notices of intent of that date". The Deputy President therefore dismissed the appeal on the grounds that the notices of intent in that case had not been properly served on the applicant, thereby endorsing the fact that service by email in such cases amounts to good service.

## The decision of the tribunal

49. The tribunal determines that the notice of intent to impose a penalty was served in time.

## The reasons for the decision of the tribunal

50. The tribunal determines that the notice was served on 27th October 2023. It accepts the argument of the Respondent which draws on the decision in *Sutton v Norwich City Council* [2020] UKUT 90 (LC that service of the notice by email is good service for the purpose of the legislation.

51. It determines that the Applicant had agreed to service by email because of the information he provided in his first licence application as well as the fact that he can be taken to have updated his contact details when he changed his email address.

52. The tribunal does not accept the argument of the Respondent that because the offence under the Housing Act is a continuing offence the period for the service of the notice of intent is extended to a period of six months commencing with the day of the application for a licence. The Respondent did not have evidence before it that the property was tenanted and therefore licensable for any date subsequent to 27th April 2023. It notes for instance in *Mohamed v Waltham Forest LBC* [2020] the argument of the appellant was that the time period commenced when the authority became aware of the offence and therefore the issue of the notice of intent on was out of time. However in that case the local authority had inspected subsequent and therefore had evidence before it, that the offence was continuing to be committed at a later date. What was decided was that if the prosecution could prove the commission of an offence within six months of the date of the laying of the information the summons is in time. That is not the case in this application where the latest date that the offence was continuing to be committed was 27th April 2023.

53. However the tribunal accepts the argument of the Respondent that the limitation period for the service of the notice commences the day

following the inspection when the Respondent obtained the evidence that the offence had been committed. This is consistent with *Radcliffe v Bartholomew* [1892], and *Marren v Dawson Bentley & Co Ltd* [1961], and makes logical sense. Otherwise the limitation period includes a part of a day and the authorities quoted by the Respondent demonstrate that the law rejects a fraction of a day.

54. The tribunal agrees with the Respondent that the decision in *Tze Moh v Rimal Properties Ltd* [2024] UKUT 324 (LC) is not relevant in the current context and is distinguishable. That decision is dealing with the enforcement regime in a different enforcement regime, the Rent Repayment regime. In addition it is interpreting provisions about the when the 12 months after an offence has been committed runs out, so it is dealing with when a period commences. In this instance the time is being calculated with when a period ends.

55. In response to the Applicant's reference to the Upper Tribunal decision in the case of the Respondent argues that the case deals with an entirely different enforcement regime, namely the rent repayment order regime under the Housing and Planning Act 2016, and deals with a time limit that is worded completely differently from that under sch.13A 2(1).

56. For these reasons the tribunal determines that the notice of intent served on 27th October 2023 was in time.

**Does the service of the final penalty notices over 12 months after the notice of intent was given breach the Applicant's right to a fair hearing within a reasonable time under Article 6 of the Human Rights Act?**

**The Applicant's argument**

57. The Applicant argues that the Applicant's Article 6 rights have been breached because of the delay between the notice of intent and the final penalty notice.

58. The date of both offences was 27 April 2023 and a notice of intent to impose both penalties was sent on 27 October 2023. After both notices of intent were sent to the Applicant on 27 October 2023, it is accepted by both parties the Applicant called the Respondent on Monday 30 October and sent follow up emails on 1 and 2 November 2023.

59. On 2 November 2023, Elizabeth Killey emailed the Applicant to explain his civil penalty representations had been received and passed to Ms Lovett to review and she would write to him with the outcome of her review. No contact details for Ms Lovett were provided to the Applicant. Ms Lovett explains in her witness statement that the Applicant's

representations dated 30 October 2023 and 1 November 2023 were passed to her to review

60. She sent no acknowledgement to the Applicant and the Applicant was given no indication how long the review would take. It is accepted a reasonable time is needed to consider representations and make an informed decision. In some cases, a local authority may wish to request more information from the recipient of the notice as part of their deliberations, although no further information was requested in this case. Likewise, a local authority could write to the recipient to explain more time was needed to review the representation and follow additional lines of enquiry. Again, this did not happen and there is no suggestion any further lines of enquiry were pursued. Apart from referring to 'pressure of work on other matters', Ms Lovett provides no explanation for the one year delay before she considered the representations. Her witness statement explains she reviewed the Applicant's representations and provided a response on 1 October 2024. This suggests the review process was completed within one day.

61. Whilst the legislation is silent on the time limit for considering representations and deciding whether to issue a final notice, the Applicant contends a 12-month delay before reviewing representations is exceptionally long and unreasonable. In this case, it meant the Applicant was not notified of the council's decision to impose a penalty until over 18 months after the date of offence.

62. The Applicant refers to Section 79(5) of the Housing Act 2004 which in relation to selective licensing states: "(5) Every local housing authority have the following general duties: (a) .....; and (b) to ensure that all applications for licences and other issues falling to be determined by them under this Part are determined within a reasonable time."

63. The Applicant argues that Parliament may have decided not to impose a maximum time limit for giving a final notice under Part 3 of the Housing Act 2004 given this general duty to determine issues within a reasonable time. Indeed, it may not have been foreseen a local housing authority would ever take this length of time to review a representation and make their decision. Schedule 13A, para 5 of the Housing Act 2004 supports that assertion. It states: "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."

64. The Applicant was given 28 days to submit their representation, which equates to 24 November 2023. The duty on the Respondent to consider the representation and make their decision applied from 25 November 2023. The Applicant accepts an equivalent 28-day period for the Respondent to review the representation and make their decision would have been reasonable. It is accepted a period of up to three months would

have been reasonable. Waiting one year before reviewing the Applicant's representation was not reasonable. It left the Applicant suffering considerable stress, anxiety and financial worry not knowing what was happening after having been told the council might impose penalties totalling £19,000. What might seem a relatively low level and routine case for the council was anything but for the Applicant, as explained in his witness statement.

65. It is contended the excessive delay in reviewing the Applicant's representations and making a decision interferes with the Applicant's right to a fair hearing within a reasonable time under Article 6 of the Human Rights Act. These are not complex proceedings and there is no good reason for the long delay in deciding to impose two civil financial penalties. The Respondent has provided no justification for the long delay except to say they were busy dealing with other unspecified matters. If these were criminal proceedings, the Applicant would have received a summons within six months setting out the council's charging decision. In these civil proceedings, the equivalent decision was made after eighteen months, meaning this appeal is being heard over two years after the date of offence.

66. The Applicant accepts that it would be preferable if Parliament had stipulated a maximum time limit for this purpose. That this was not done means this matter requires the Tribunal's consideration. Objectively, there must be a point in time that the decision to impose a penalty becomes unreasonable. There seems little doubt service of a final notice after 2, 5 or 10 years would be unreasonable. The question in this case is whether taking 1 year to review short representations and make a decision to impose penalties is unreasonable. The Applicant invites the Tribunal to consider whether the long delay should result in the penalty being cancelled

**The Respondent's response**

67. Firstly, the Respondent asserts that the very fact that the Applicant has the right to bring this appeal is evidence that the statutory regime under the Housing Act 2004 provides sufficient procedural safeguards to protect the Applicant, and other recipients of financial penalties, and ensure that they receive a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. That statutory regime has not only afforded the Applicant the initial right to make representations to the Council as to why final notices should not be issued, but has also then afforded the Applicant the right to bring these very appeals. On that basis it is hard to see any way in which the Applicant's Article 6 rights have been even close to being breached in this instance.

68. Secondly, and as was already pointed out by the Applicant in their initial grounds of appeal set out in the appeal application forms, "the Act refers

to no limitation period" for a local authority to issue final notices. Given that the Act provides time limits for a great many other steps in the various enforcement regimes it provides for, in cannot be clearer that Parliament plainly did not intend there to be a time limit either within which any representations received in response to a notice of intention should be responded to, or for final notices of decision then to be issued.

69. Thirdly, and even without the procedural safeguards provided under the Housing Act 2004, the Respondent further asserts that other procedural safeguards exist and are open to the Applicant to protect them from any overreach by the state in the event of unreasonable, illogical, or irrational conduct, namely Judicial Review and the Local Government Ombudsman. Had the Applicant been regularly chasing the Council for a decision on his representations, and had the Council either stonewalled him or refused to provide that information, then the Applicant may well have had cause to Judicially Review that decision or lack of decision, or at the very least to bring a complaint before the Local Government Ombudsman.

70. Finally, and without prejudice to the foregoing, even if there was accepted to be an implied requirement that the Council must act reasonably and in good faith when carrying out its regulatory functions under the Housing Act 2004, the Respondent asserts that a period of just over 12 months between the issuing of the notices of intent in this case and the subsequent issuing of the final notices is not such a long period so as to give rise to any grounds for complaints of abuse of process or unfair treatment. Furthermore, prior to issuing the final notices, the Council also responded to the Applicant's representations in response to the notices of intent on 1 October 2024. In the circumstances, it is hard to see what criticism could then be levelled at the Council for having waited a further few weeks before issuing the final notices, thereby giving the Applicant the opportunity the opportunity to raise any further concerns if he so wished.

## **The decision of the tribunal**

71. The tribunal determines that there has been no breach of Article 6 of the Human Rights Act as a result of the Respondent's delay in responding to the Applicant's representations.

## T**he reasons for the decision of the tribunal**

72. The tribunal accepts that the period of waiting for a response was stressful for the Applicant. However it accepts the arguments of the Respondent, that the Applicant has failed to make an arguable case that its Article 6 rights have been breached.

73. It agrees with the Respondent that the lack of a specific time limit for the issue of the final notice is significant and indicative of Parliament's intentions.

74. It also agrees that there is a robust appeals system which provides the necessary safeguards for the Applicant which operates alongside the protections offered by judicial review and complaints to the Local Government Ombudsman.

75. In addition the Applicant asserts rather than demonstrates that the delay was not reasonable.

76. For these reasons the tribunal determines that there has been no breach of the Applicant's Article 6 rights.

## Conclusion

77. Therefore the financial penalties are confirmed, in the amounts agreed by the parties, ie a combined amount of £11,400 (or £5,700 each).

**Name:** Judge H Carr **Date:** 18th June 2025

## 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).

1.