FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**CAM/12UD/HNB/2024/0005**
Property	:	**29 Castle Mews, Wisbech PE13 1HD**
Applicants	:	**Bhupinder Johal and Jaswinder Kaur Johal**
Representative	:	**Gurmit S. Kang**
Respondent	:	**Fenland District Council**
Representative	:	**Andy Brown**
Type of application	:	**Appeal against a financial penalty under section 249A and schedule 13A of the Housing Act 2004**
Tribunal members	:	**Judge A. Arul** **Gerard F. Smith MRICS FAAV**
Hearing date	:	**28 March 2025**
Date of decision	:	**27 August 2025**

DECISION

Decisions of the Tribunal

(1) The appeal is allowed in part and the Tribunal varies the financial penalty issued by the Respondent to the Applicants jointly in relation to the Property to £45,000.

(2) The Tribunal makes the determinations as set out in the decision below.

Reasons

The Application

1. By an application dated 21 March 2024 the Applicants appealed against a civil financial penalty of £63,000 imposed upon them jointly by the Respondent by a Final Notice dated 23 February 2024 in respect of the Property.

2. Directions were issued by the Tribunal on 25 November 2024. There was some deviation from the timetable but not material for the purposes of this Decision.

3. The application is opposed by the Respondent. Both parties presented their own bundle of documents, comprising 29 pages (Applicants) and 460 pages (Respondent). There were some additional documents. Firstly, the Respondent's enforcement policy, which arrived the day before the hearing. The Tribunal was also provided with official copies of the title to the Property, which arrived during the hearing. The Applicants raised no objection to admission of these late documents. We would in any event have admitted them into evidence, given that they are in the public domain, had been referenced in correspondence between the parties and there was therefore no prejudice to the Applicants.

4. There was an application to adjourn the hearing and to admit late documents made via email on 24 March 2025 on behalf of a company purporting to represent the Applicants. The Tribunal invited the company to clarify its authority to act and the nature and relevance of documents and invited the Respondent to confirm its position. The Respondent made no comment. The Applicants clarified that they wished to file witness evidence exhibiting documents including photographs, having now taken legal advice. This was later expanded upon to include medical evidence relating to Mr Johal. The Tribunal refused the application to adjourn for reasons set out in an email dated 26 March 2025 and the parties were informed that any further application would be dealt with at the hearing.

5. Late in the evening the night before the hearing the Applicant sent in a bundle comprising 18 pages which including an emergency lighting test

certificate and some photographs. These amongst other things appeared to show that some window works had been carried out. The provenance of the photographs was not clear on their face, Mr Kang confirmed they were taken within the preceding three months. The Respondent did not object to the late admission of these documents.

6. The application was heard by video link on 28 March 2025. The First Applicant, Mr Johal, attended and was represented by Mr Kang. Also present was a Mr Rahman, said to be assisting Mr Johal. The Respondent was represented by Mr Brown, its Private Sector Housing Enforcement Officer. Evidence for the Respondent was given by Mr Brown and also by Daniel Horn, its Assistant Director. Also present at the hearing was Jo Evans, Housing Compliance Manager at the Respondent. The request to adjourn was not renewed.

7. The witness evidence for the Applicants comprised a four-page statement from Mr Kang dated 7 February 2025 together with a further representations document, also of four pages. Mr Kang confirmed these statements (which did not have statements of truth). The witness evidence for the Respondents comprised a four-page statement from Mr Brown together with exhibits and a one-page statement from Mr Horn together with exhibits, both dated 22 January 2025. We heard live evidence from each witness.

8. On 19 May 2025, Mr Kang emailed the Tribunal, copied to the Respondent, submitting that: *"As for the finances of both Mr and Mrs Johal, the financial information provided contained an estimated valuation of their two investment properties. The Council indicated that there was equity in both properties which could be sold to realise the fines. I apologise but I had omitted to state that both properties would attract CGT. In effect, both are in negative equity."* No permission was given for later evidence, submitted several weeks after the hearing. In any event, the information does not assist the Tribunal as no figures or supporting evidence were provided. At best, it is a broad assertion that sale of property attracts expenses which affect the available net equity if any. This is a proposition which the Tribunal takes judicial notice of but cannot make a determination upon without more precise information, which the Applicants had a fair opportunity of presenting at and prior to the hearing.

The Facts

9. The primary factual events were largely agreed between the parties, as summarised below.

10. The Property comprises four flats, known as A, B, C and D. It includes some communal areas. These proceedings relating to flats A, C and D together with the communal areas.

11. The Property sits behind commercial shop premises at 1 High Street, Wisbech PE13 1DB. The flats have separate access through Castle Mews to the side and rear. Flats C and D are above the shop and Flats A and B are toward the rear, fronting Castle Mews.

12. The Applicants are the freehold proprietors of the Property, having acquired it on 7 May 2003.

13. The Applicants operate the shop at the front of the Property but do not reside there and live at a separate residential address.

14. There have been some historical issues of overcrowding and disrepair to the Property. It seemed to be common ground that there is a large immigrant population in the area, which the Applicants say contributed to overcrowding. They also say that there were language barriers which meant, for example, that instructions not to accumulate rubbish in communal areas or even in the public street were not complied with. The Applicants say that things were better since families had moved into the flats and that they issued instructions in English and in Bulgarian. We were shown an example of this. Whilst the Respondent understandably was not privy to all dealings at the Property, it broadly accepted in principle that there had been such historical issues,.

15. Improvement Notices were served on the Applicants in 2021 in respect of the Property. We were not provided with copies however we were told that there had been a previous civil financial penalty issued in 2021 arising from those notices. We had no details of that penalty other than an approximate figure of £6,000 but were told that an agreement had been reached for the Applicants to pay it by instalments of £300 per month. We were also told that the Applicants had defaulted with no payment since May 2024.

16. The present proceedings relate to further Improvement Notices issued by the Respondent on 12 January 2023 for flats C and D and on 20 January 2023 for flat A and the communal areas. Importantly, no appeal to the Tribunal was made in relation to those Improvement Notices. The Tribunal was provided with evidence from both parties as to the process of inspections leading up to the issue of the notices as well as photographs of the Property. This chronology has not been rehearsed here because the Tribunal cannot go behind the notices in these proceedings but only has jurisdiction to consider by way of re-hearing whether the civil penalty process was correctly followed and the amount of the penalties imposed having regard to the policies followed by the Respondent. This is important because, for example, in relation to the communal areas, the Tribunal had some reservations as to whether there was a sufficient fall hazard justifying relaying of paving per the improvement notices. However, we reminded ourselves that we were bound to take the hazards identified and works required at face value and could only consider whether there was reasonable excuse for not

undertaking the works within the specified times and/or the culpability and harm factors arising from the breach.

17. Several Notices of Intent to issue a civil penalty were sent by the Respondent pursuant to sections 11 and 12 of the Act based, respectively, on category 1 and category 2 hazards identified under the Housing Health and Safety Rating System. Category 1 notices were served for flat C on 24 July 2023 and for flat D on 25 August 2023. Category 2 notices were served for flats A, C, D and the communal areas on 24 July 2023.

18. Representations against the Notices of Intent were sent on behalf of the Applicants to the Respondent on 8 November 2023 and 17 November 2023.

19. Final Notices of civil penalties were sent by the Respondent to the Applicants following a review of the Notices of Intent and Representations. This review was conducted by Mr Horn on or around 23 February 2024 and each Final Notice is dated that day. These can be summarised as follows:

    (i) Communal Areas – category 2 hazards - £11,000 (as per Notice of Intent)
    (ii) Flat A – category 2 hazards - £5,000 (reduced from £7,000 in Notice of Intent)
    (iii) Flat C – category 1 hazards - £5,000 (reduced from £11,000 in Notice of Intent)
    (iv) Flat C – category 2 hazards - £9,000 (reduced from £12,000 in Notice of Intent)
    (v) Flat D – category 1 hazards - £20,000 (as per Notice of Intent)
    (vi) Flat D – category 2 hazards - £13,000 (reduced from £15,000 in Notice of Intent)

20. The total penalties against both Applicants for all flats and communal areas were therefore reduced from £79,000 to £63,000 on review for the purposes of the Final Notices. It is the sum of £63,000 which is therefore under challenge in the present proceedings.

21. It was common ground that some items, such as windows, appeared on the 2021 and 2023 Improvement Notices, however the Respondent's position was that there had been deterioration such that hazards had moved from category 2 to category 1.

22. It was also common ground that the Applicants had engaged contractors to undertake works at the Property. In other words, that there had been some attempt to comply with the Improvement Notices. There was a difference of view as to the scope and extent of this i.e., degree of effort made toward compliance.

23. The basis of calculation of the amounts of the penalties is set out in the Notices of Intent and in the Final Notices. Our findings on those amounts are set out later in this Decision.

24. There was a dispute as to whether there had been sufficient service of the Improvement Notices, Notices of Intent and Final Notices. There was, however, no dispute that the Applicants were persons in control of the Property (and therefore liable for a penalty) because they were both freehold owners and were in receipt of the rack-rents.

The Law and Issues

25. Section 249A of the Housing Act 2004 ("the 2004 Act") states that:

> "(*1) The local housing authority may impose a financial penalty on a person if satisfied, beyond reasonable doubt, that the person's conduct amounts to a relevant housing offence in respect of premises in England.*"

26. Section 249A(2) of the 2004 Act sets out what constitutes a "relevant housing offence". It includes those under section 30 of the 2004 Act.

27. Section 30 of the 2004 Act states that:

> *"(1) Where an improvement notice has become operative, the person on whom the notice was served commits an offence if he fails to comply with it.*
> *(2) For the purposes of this Chapter compliance with an improvement notice means, in relation to each hazard, beginning and completing any remedial action specified in the notice—*
> *(a) (if no appeal is brought against the notice) not later than the date specified under section 13(2)(e) and within the period specified under section 13(2)(f);*
> *(b) (if an appeal is brought against the notice and is not withdrawn) not later than such date and within such period as may be fixed by the tribunal determining the appeal; and*
> *(c) (if an appeal brought against the notice is withdrawn) not later than the 21st day after the date on which the notice becomes operative and within the period (beginning on that 21st day) specified in the notice under section 13(2)(f).*
> *(3) A person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.*
> *(4) In proceedings against a person for an offence under subsection (1) it is a defence that he had a reasonable excuse for failing to comply with the notice.*
> *(5) The obligation to take any remedial action specified in the notice in relation to a hazard continues despite the fact that the period for completion of the action has expired.*

(6) In this section any reference to any remedial action specified in a notice includes a reference to any part of any remedial action which is required to be completed within a particular period specified in the notice.
(7) See also section 249A (financial penalties as alternative to prosecution for certain housing offences in England).
(8) If a local housing authority has imposed a financial penalty on a person under section 249A in respect of conduct amounting to an offence under this section the person may not be convicted of an offence under this section in respect of the conduct."

28. Section 263 of the 2004 Act sets out definitions of "person having control" and "person managing", as:

"*(1) In this Act "person having control", in relation to premises, means (unless the context otherwise requires) the person who receives the rack-rent of the premises (whether on his own account or as agent or trustee of another person), or who would so receive it if the premises were let at a rack-rent.*

(2) In subsection (1) "rack-rent" means a rent which is not less than two thirds of the full net annual value of the premises.

(3 In this Act "person managing" means, in relation to premises, the person who, being an owner or lessee of the premises—

(a) receives (whether directly or through an agent or trustee) rents or other payments from—

(i) in the case of a house in multiple occupation, persons who are in occupation as tenants or licensees of parts of the premises; and (ii) in the case of a house to which Part 3 applies (see section 79(2)), persons who are in occupation as tenants or licensees of parts of the premises, or of the whole of the premises; or

(b) would so receive those rents or other payments but for having entered into an arrangement (whether in pursuance of a court order or otherwise) with another person who is not an owner or lessee of the premises by virtue of which that other person receives the rents or other payments; and includes, where those rents or other payments are received through another person as agent or trustee, that other person."

29. In the first instance, the local housing authority must ascertain beyond reasonable doubt that a relevant improvement notice has become operative and that the Applicant has failed to comply by beginning and completing any remedial action as specified in the notice in relation to each hazard identified.

30. If the local housing authority determines that a relevant housing offence has been committed, Schedule 13A to the 2004 Act sets out the procedural requirements which the local housing authority must then follow, including the service of Notices of Intent and of Final Notices, before the financial penalty may be imposed under section 249A.

31. In addition, by paragraph 12 of Schedule 13A to the 2004 Act, the local housing authority must have regard to guidance which the government has issued to local housing authorities as to how their financial penalty powers are to be exercised. The guidance confirms that local housing authorities are expected to issue their own policies in relation to housing offences and the imposition of civil penalties, and must include the factors which they will consider when establishing the offender's level of culpability and the harm which has been caused by the offence, as well as a matrix for calculating the appropriate level of penalty after taking into account any additional mitigating or aggravating circumstances.

32. In this case, the Respondent's policy was not included in either bundle, despite being of obvious significance. Copies were sent by the Respondent the day before the hearing. This is a document entitled 'Housing Enforcement Policy 22nd July 2022'. The Tribunal has had regard to this document.

33. On an appeal against a financial penalty, the Tribunal is required to make its own finding as to the imposition and/or amount of a financial penalty. The principal ground of appeal is simply that all of the penalties are excessive in all the circumstances. The appeal is a re-hearing, hence the Tribunal may take into account matters which were unknown to the local housing authority when the Final Notices were issued. The Tribunal may uphold, revoke or vary the penalties pursuant to paragraph 10(4) of Schedule 13A to the 2004 Act.

34. When considering how to exercise its powers under paragraph 10(4) of Schedule 13A to the 2004 Act, the Tribunal is to start from the local housing authority's policy which underlies the decision to issue the civil penalties and apply it as if we are standing in the shoes of the original decision-maker, giving proper consideration to arguments that we should depart from the policy. In doing so, we are required to pay proper attention to the decision under challenge and the reasoning behind it, although we can and should depart from the policy in certain circumstances, such as where it had been applied too rigidly. The burden lies with the Applicants to persuade the Tribunal to depart from the policy and, in considering that matter, the Tribunal has to look at the objectives of the policy and ask itself whether those objectives would be met if the policy were not followed. Further, the Tribunal is carrying out a rehearing, not a review, and while the original decision of an elected authority carries a lot of weight, the Tribunal can vary the decision if, having given it that special weight, it is agreed with the local housing

authority's conclusion. These points were confirmed in the case of *Waltham Forest London Borough Council v Marshall* [2020] 1 WLR 3187.

35. The issues set out in the annex to the Directions made on 25 November 2024 broadly provide for the above questions. There were two central issues in the present case. Firstly, whether the relevant Improvement Notices, Notices of Intent and Final Notices had been properly served and, secondly, whether the penalties imposed were excessive.

The Applicants' position

36. Mr Kang confirmed that it was Mr Johal who was managing the Property following the initial visit on 4 November 2022 and that Mrs Johal was not involved. They both work in the shop but not all of the time, regularly on Friday and Saturday and occasionally other days. It is a few minutes' walk to the flats.

37. He confirmed that appropriate builders were instructed, time was requested by them. The Applicants instructed builders if there were problems, they could not undertake building works themselves. He conceded that further time could have formally been requested if required.

38. In relation to payment of the previous civil penalty, Mr Kang confirmed his understanding that this was being repaid at £300 per month but stated he was not aware of when the last repayment was. He conceded that arrangements had not been kept to.

39. In his submissions, Mr Kang reinforced the difficulties which he said the Applicants faced with carrying out required works within the stated time frames. He said different trades persons were needed, they were not always reliable. He said some would just leave. The Applicants ended up getting a team from Leicester. He referred us to his further representations for fuller detail, and copies of invoices, for example one from a builder from Leicester who had replaced a fire door and repaired the bathroom. He conceded that the quality and detail of the invoices shown to us were poor, for example most did not have any contact details for the contractor in question. He relied on the difficulties securing trades persons as reasonable excuse. He conceded that the Applicants could have appealed the Improvement Notices but did not.

40. In relation to the degree of culpability, Mr Kang pointed to the fact that there had been no tenant complaints. In general, Mr Kang said the penalties were too high.

The Respondent's position

41. Mr Brown confirmed in his evidence that the Property comprised a single title with flats C and D sitting above the commercial premises. The register entries we were shown recorded 611 Welford Road as the address for service on the proprietors. He considered he had followed the requirements notwithstanding that the Applicants might reside at 521 Welford Road.

42. He confirmed that the Property was known to other local authority departments, as waste collection had been an issue.

43. He confirmed that he had been contacted by contractors working for the Applicants since the Notices of Intent were served in January 2023. He clarified that his role was to assist so he was always happy to be contacted. His issue was that, whilst the Applicants may have engaged contractors, the works had not progressed to a satisfactory degree.

44. He conceded that there were several items of works needed and this required different trades but said some were small and easy to resolve. He was shown some of the invoices relied upon by the Applicants and agreed that some works were carried out. He pointed out that some works were carried out after the expiry of the Improvement Notices, for example an invoice dated 25 June 2025 from Smurf Property Maintenance relating to adjustments to the fire door in flat C and replacement of emergency lights in flat D.

45. We were shown an email dated 23 March 2023 from Mr Kang to Mr Brown in which he stated his understanding that the 'majority of the works have been completed' except for the flat D window replacement. Mr Brown confirmed he had received the email. He acknowledged that he had not looked into whether planning permission might be required, whether listed building consent might be required, or practicalities such as the possible need to remove the windows off site. He was taken to an email exchange between Mr Kang and the planning team on or around 30 March 2023 confirming the need for planning and listed building consent. He could not recall the name of the contractor whom he contacted which formed the basis of him believing the windows could be repaired or replaced within a few weeks. He confirmed that he telephoned a local company. He assumed the windows would be boarded up and agreed it was advisable to undertake the work in summer months for residential property.

46. In relation to the excess cold hazards, Mr Brown confirmed he carried out a visual inspection and there was no thermal inspection. He based his findings on the HHSRS. He conceded that the standards focus on temperature only. He confirmed that there was heating in all the flats.

47. In relation to the fire safety hazards, Mr Brown confirmed that the error for flats C and D was picked up by Mr Horn during his review. He conceded that, if connected the mains, smoke alarms should be in good order for a number of years.

48. In relation to the flat roof, Mr Brown felt that there was a potential slipping hazard with water dropping to one side. He conceded that it was not his area of expertise, but said he would expect a gradual slope, there was a puddling hazard. He was willing to work with the Applicants to find a method to remove the puddling. He was taken to a photograph (page 21 of the Respondent's bundle) showing pooling on one side of the flat roof. It was put to him that it was taken at an incredibly wet time of year, garden path or patio areas will pool, moisture can remain and cause potential black ice but there was drainage at the far end by the metal gate. The priority was for water to escape and not freeze. Further, that local authorities would not receive category 1 notices for water on pavements. He said the water does not get to the metal gate, he has seen it go all across the flat roof meaning there is no way for the tenants to escape without walking through the pooled water. His concern was fire escape. He referred to the Applicants' recent photographs (page 7 of that short bundle).

49. Mr Brown confirmed that he agreed with Mr Horn's assessment accompanying the Final Notices sent on 23 February 2024.

50. We also heard from Mr Horn, who confirmed that he had carried out the review leading to the Final Notices and had taken account of the representations including the tenant issues, workforce problems and financial problems. He said he paid attention to whether the Applicants could pay a penalty within a reasonable time. He confirmed that he had referred this (including the unsigned and undated financial means form) to his financial colleagues to assess the financial position. They were satisfied that the penalties were proportionate to the Applicants means. He was not able to refer us to any particular document or communication from those colleagues. He clarified, however, that they felt that there was scope to pay within 12 months. He referred to the income tax return figures. He said that if further information came to light after the penalties were issue the Respondent would always consider affordability.

51. Mr Horn was taken to some of the financial documents showing the mortgage statement balance and bank loans and asked to confirm how penalties of £63,000 could be paid within 12 months. He said the Applicants were given reasonable time and opportune to explain their financial circumstances. He felt 12 months could be done and applied a test of what a reasonable person would think, recognising that an offence had occurred. He said the Applicants would have had time to sell an

asset, for example 230 Narborough Road in Leicester would release around £90,000 to clear the penalties. He conceded the numbers did not take account of sales costs.

52. In relation to the culpability and harm assessments, Mr Horn confirmed that he considered each as per his report (attached to the Final Notices).

Conclusions and Reasons

Relevant Offence

53. The Tribunal must be satisfied beyond a reasonable doubt that the Applicant committed a “relevant housing offence” in respect of the Properties for the period to which the Final Notices relate.

54. The Applicants took issue with the scope and timescales of work required under the Improvement Notices but did not appeal those at the time. Neither party ventured to say that there was full compliance and/or that there was not an offence committed. Mr Kang’s submissions stated they were in mitigation and made no challenge to the question of whether an offence had been committed in principle.

55. The Tribunal was satisfied beyond a reasonable doubt that the Applicants committed a “relevant housing offence” in respect of the Property for the period in question in that they failed to comply with the Improvement Notices by both beginning and completing the remedial actions required under them.

56. In proceedings against a person for an offence under subsection 30(1) it is a defence under subsection 30(4) that he had a reasonable excuse for failing to comply with the notice. We were not satisfied that there was an absolute defence to the offences. The only defence put forward was inability to find appropriate trades persons in time. Given that some works were carried out and it was possible to request further time, we were not satisfied that workforce difficulties is sufficient to constitute a reasonable excuse for non compliance.

Service of Notices

57. The Improvement Notices, Notices of Intent and Final Notices were addressed to the Applicants at 611 Welford Road, Leicester LE2 6FP. This was the service address noted against the title for both Applicants.

58. We were told that number 521 Welford Road is the Applicant’s home address and that this was purchased by the Applicants five years prior. Number 611 belongs to their late father. Notwithstanding this, it was reasonable for any third party, including the Respondent, seeking to

respond to the Applicants about the Property to utilise their correspondence address noted on the Land Registry title. We were satisfied that there was correct service.

Amount of the Penalties

59. The government encourages each local housing authority to issue its own policy for determining the appropriate level of penalty, with the maximum amount being reserved for the worst offenders. Relevant factors include:

a. the severity of the offence;

b. the culpability and track record of the offender;

c. the harm caused to the tenant;

d. punishment of the offender;

e. deterring the offender from repeating the offence;

f. deterring others from committing similar offences;

g. removing any financial benefit the offender may have obtained as a result of committing the offence; and

h. the offender's means.

60. The Tribunal has considered the Respondent's published policy and it adopts these factors. The Respondent's process was to identify a starting figure for each penalty. First, by determining the severity of the offence by reference to culpability and, second, the harm (or risk of harm) caused by the offence. These are then converted to a point scale which is in turn used to identify a penalty banding. The starting point for a penalty is then the mid-way point of that banding, adjusted for the aggravating and mitigating factors in the annex to the policy.

61. In general, we do not find the Improvement Notices excessive. The time scales were fair and proportionate to their means. We do not accept that the Applicants could not have had the works carried out within the time scales mentioned, save that additional time to carry out the window works would have been reasonable. The Applicants worked at the front shop. The evidence of contractors was less than convincing, for example the absence of contact details for most of them and sparse details of works undertaken.

62. We find as follows:

(i) Flat A category 2 hazards - £5,000 is reasonable. We agree with the assessment of medium culpability and low harm. This has been applied appropriately, there was a failure to take care pointing to medium culpability but we agree that there was low harm given only one defect relating to a door remained. We uphold the penalty.

(ii) Flat C category 1 hazards – £5,000 is reasonable. We agree with the assessment of low culpability and medium harm. This has been applied appropriately, the majority of work had been completed but there was still some work remaining including a locking mechanism on the window and some minor painting. We uphold the penalty.

(iii) Flat C category 2 hazards – £9,000 is reasonable. We agree with the assessment of medium culpability and medium harm. This has been applied appropriately. We might have gone up to high culpability as it appears very little work was carried out when one takes away the three erroneous remedial actions for fire safety. We uphold the penalty.

(iv) Flat D category 1 hazards – £20,000 is not reasonable. We consider it appropriate to reduce the assessment from high to medium culpability. The Applicants had completed most of the work, it was mainly painting remaining. The Respondent has conflated 10 individual items for what is essentially one job relating to the windows. We consider it appropriate to keep the harm rating as high. This adjustment means a point scale of 6 with a banding of £11,000-15,000. We find the lower end of this scale to be appropriate to reflect in part the unrealistic timescales, albeit further time could have been requested. The Applicant asked for 3 months but only received 2 months. They should have challenged timescales by appealing the Improvement Notice. The Respondent needed to allow 12 weeks for planning (giving allowance from the statutory consultation period of 8 weeks to reflect practical realities with local authority delays). Time should have been allowed to make the application and establish if permission was needed or not, and whether there was a repair or replacement would significantly affect timescales. We were not satisfied that Mr Brown made his enquiries locally with sufficient detail. Repairs can be done without planning, replacement requires full planning and listed building consent. This may take some 18 weeks before starting work. The sash windows would need to be taken off site. We would have expected the process to take at least 6 months for a listed building requiring a physical change. We consider £11,000 to be reasonable, and accordingly we reduce the penalty from £20,000 to £11,000.

(v) Flat D category 2 hazards – £13,000 is reasonable. We agree with the assessment of high culpability and medium harm. This has been applied appropriately, we consider the fire door minor, as it just needs adjustment, but the Applicants had not completed the other works, with a consequent risk of harm. We uphold the penalty.

(vi) Communal – £11,000 is not reasonable. We consider it appropriate to maintain the assessment of medium culpability but to reduce the harm factor to negligible. We agree that there was a failure to take reasonable care however there was no clear evidence of water sitting on paving to the extent that it would not be an obvious harm to those passing. The photographs we were shown demonstrated that water did not block the pathway, users could simply walk around any puddling. It would be reasonable to wait until the summer to undertake this work. This adjustment means a point scale of 3 with a banding of £1,000-3,000. We consider the mid-way point to be reasonable at £2,000, and accordingly we reduce the penalty from £11,000 to £2,000.

63. We therefore find that a total penalty of £45,000 is appropriate.

64. We have considered the principle of totality and fairness. We are satisfied that there is a second offence and that there is no duplication with the category 2 concerns over windows in 2021.

65. The information on financial circumstances was less than satisfactory and the Applicants have not assisted their case in this regard. They could have provided more detailed and current information. We do not consider that the Respondent undertook a proper assessment given the gaps in evidence as to income and expenditure.

66. We had an undated and unsigned income and expenditure form which purported to show £4,000 per month total income and £3,819 outgoings. It showed further rental income of £6,725 derived from two investment properties, but no evidence of outgoings against that. There was a mortgage statement from 2023 showing £1,430.25 as the monthly payment for, presumably one of those properties. Draft business accounts to 5 April 2022 (3 years out of date) showed £58,350 profit for the preceding year; presumably split between Mr and Mrs Johal. The only real evidence of personal net income was tax calculations for the Applicants for the 2021-2022 tax year showing gross income of around £38,127 for Mr Johal and £36,077 for Mrs Johal. This information is over three years out of date, and is not accompanied by any other evidence of household expenditure or debt. As to expenditure, there were some water bills which date back to 2023 and do not assist us without further context.

67. We were told there were mortgages of £620,000 in relation to the two investment properties and about £205,000 equity based on current valuation less mortgage but before other costs. We understand that the Applicants own their own home, but there was little evidence about it. The residential mortgage statement showed a capital balance of £191,964.76 as at 31 December 2023 and monthly direct debits of varying amounts but around £1,000 a month. The difficulty is not having any context, for example the available equity in the property

when the mortgage is set against market value or the gross household income against which the mortgage monthly payments can be offset.

68. Likewise, we had business loan statements showing two loans totalling about £620,000 in capital balance by December 2024 and about £5,700 of monthly payments. But, again, we have no context on what business income this is being set against.

69. We had limited information about the previous civil financial penalty other than the broad figures mentioned earlier in this decision.

70. In consequence of our findings we determined that the financial penalty imposed on the Applicants jointly should be varied to £45,000 and there are no personal financial circumstances which justify a departure from this. We vary the Final Notices to £45,000 accordingly.

71. We cannot make orders regarding the payment terms of the varied penalties. We encourage transparency from the Applicant as to their personal circumstances so as to allow the parties to discuss affordability and payment terms.

Name:	Judge A. Arul	**Date:**	27 August 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).