FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	HAV/29UN/HNA/2026/0005
Property	:	11 Carlton Avenue, Ramsgate, Kent CT11 9BP
Applicant	:	G & O Rents Limited
Representative	:	Praxis Block Management Ltd
Respondent	:	Thanet District Council
Representative	:	
Type of Application	:	**Appeal against a financial penalty** - Section 249A & Schedule 13A to the Housing Act 2004
Tribunal Members	:	Judge C Skinner Mr M Williams MRICS Ms J Herrington
Date of Hearing	:	6 August 2026
Date of Decision	:	11 September 2026

DECISION

SUMMARY OF DECISION

a. **The Tribunal finds beyond all reasonable doubt that the Applicant breached the terms of an Improvement Notice dated 7 June 2023 and thereby committed an offence under Section 30(1) Housing Act 2004.**

b. **The Tribunal finds on balance of probabilities there is no reasonable excuse defence made out.**

c. **The Tribunal finds the Respondent complied with the requirements of Schedule 13A Housing Act 2004 (as amended by Housing and Planning Act 2016) when issuing the Financial Penalty Notice dated 10 December 2025 under powers available to it under s249A Housing Act 2004 (as amended by Housing and Planning Act 2016)**

d. **Under Schedule 13A, para 10(4) Housing Act 2004 (as amended by Housing and Planning Act 2016), the Tribunal conducted a re-hearing of the Respondent's decision to issue a Financial Penalty, and determines the amount of the penalty to be £9,000 for the reasons set out below.**

Background

1. The Applicant is the freeholder of 11 Carlton Avenue, Ramsgate, Kent CT11 9BP ("the Property"). The Property comprises a converted building containing four flats. By way of application dated 6 January 2026, the Applicant made an application to appeal against a Financial Penalty that has been issued against it by the Respondent based on non-compliance with an Improvement Notice served upon the Applicant by the Respondent on 7 June 2023. The Improvement Notice had required the works identified within it to begin no later than 19 January 2024 and completed by 21 March 2024.

2. The Financial Penalty imposed by the Respondent is pursuant to powers granted to it under Section 249A of the Housing Act 2004 ("the Act") as an alternative to prosecution for the offence of failing to comply with an Improvement Notice served under section 12 of the Act.

3. On 17 April 2024 the Respondent, having inspected the Property, determined that the works required by the Improvement Notice had not been carried out. On the same date the Respondent sought recovery of its enforcement expenses in the sum of £646.

4. On 6 May 2025 the Respondent inspected the Property again. The Respondent concluded that the works required by the Improvement Notice had not been completed. A request by the Applicant for additional time to complete the necessary works was subsequently refused.

5. On 2 July 2025 a Certificate of Practical Completion was issued by the Applicant’s contract administrator certifying that the relevant improvement works required under the Improvement Notice had been practically completed.

6. On 15 October 2025 the Respondent served a Notice of Intent proposing to impose a financial penalty of £9,000 under section 249A of the Housing Act 2004. The Respondent took the view that an offence under section 30 of the Housing Act 2004 had been committed because the works had not been completed by the compliance date specified in the Improvement Notice and had been completed only some 15 months after that date.

7. Applying its Financial Penalties Policy, the Respondent assessed the offence as medium culpability, no or negligible track record, a portfolio size of 20 or more units and a level 2 risk of harm.

8. On 22 October 2025 the Applicant's managing agent sought to provide the Respondent with the Certificate of Practical Completion and requested withdrawal of the Notice of Intent. However, the email was sent to an incorrect email address and was not received by the Respondent. Consequently, no representations were recorded as having been submitted within the statutory period.

9. On 10 December 2025 the Respondent served a Final Notice imposing a financial penalty of £9,000 which subsequently led to the Applicant appealing to the Tribunal against both the decision to impose the financial penalty and the amount of that penalty.

10. On 8 July 2026 the Respondent determined that the requirements of the Improvement Notice had been satisfied and on 15 July 2026 formally revoked the Improvement Notice pursuant to section 16 of the Housing Act 2004. The revocation was based upon the Respondent's being satisfied that the required works under that Improvement Notice had been completed.

11. The Tribunal has been provided by the Applicant a determination bundle consisting of 453 pages. The Applicant also submitted in advance of the hearing a skeleton argument, chronology, reading list and bundle of authorities consisting of 738 pages. The Tribunal has read the bundle and all associated material. References in this decision to page numbers in the bundle are indicated as [ ] and references to the authorities bundle are indicated as [AB].

12. The lack of mention of any particular document or submission should not be regarded as indicating that it has not been taken into account. The Tribunal has focused on the key issues identified that require determination. In writing this decision the Chairman has had regard to the Senior President of Tribunals Practice Direction – Reasons for Decisions, dated 4 June 2024.

13. The final hearing was listed to take place remotely via video link on 6 August at 10am. After some initial technical difficulties, both the Applicant and Respondent attended the hearing. The Applicant was represented by Mr Perring of Counsel and the Respondent was represented by Mr Bray, a Senior Housing Improvement Officer employed by the Respondent. Also in attendance were Mr Nath, a Director of Praxis Block Management (the Applicant's managing agent) and also Mr Khan also from Praxis Block Management who was observing the hearing only.

The Law

14. Section 30 Housing Act 2004 reads as follows:

(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.

15. Section 249A Housing Act 2004 reads as follows:

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

(2) In this section "relevant housing offence" means an offence under—

(a) section 30 (failure to comply with improvement notice),
(b) section 72 (licensing of HMOs),
(c) section 95 (licensing of houses under Part 3),
(d) section 139(7) (failure to comply with overcrowding notice), or
(e) section 234 (management regulations in respect of HMOs).

(3) Only one financial penalty under this section may be imposed on a person in respect of the same conduct.

(4) The amount of a financial penalty imposed under this section is to be determined by the local housing authority, but must not be more than £30,000.

(5) The local housing authority may not impose a financial penalty in respect of any conduct amounting to a relevant housing offence if—

(a) the person has been convicted of the offence in respect of that conduct, or
(b) criminal proceedings for the offence have been instituted against the person in respect of the conduct and the proceedings have not been concluded.

(6) Schedule 13A deals with—

(a) the procedure for imposing financial penalties,
(b) appeals against financial penalties,
(c) enforcement of financial penalties, and
(d) guidance in respect of financial penalties.

(7) The Secretary of State may by regulations make provision about how local housing authorities are to deal with financial penalties recovered.

(8) The Secretary of State may by regulations amend the amount specified in subsection (4) to reflect changes in the value of money.

(9) For the purposes of this section a person's conduct includes a failure to act.

16. Para 10 of Schedule 13A Housing Act 2004 reads as follows:

Appeals

10 (1) A person to whom a final notice is given may appeal to the First-tier Tribunal against—

(a) the decision to impose the penalty, or
(b) the amount of the penalty.

(2) If a person appeals under this paragraph, the final notice is suspended until the appeal is finally determined or withdrawn.

(3) An appeal under this paragraph—

(a) is to be a re-hearing of the local housing authority's decision, but
(b) may be determined having regard to matters of which the authority was unaware.

(4) On an appeal under this paragraph the First-tier Tribunal may confirm, vary or cancel the final notice.

(5) The final notice may not be varied under sub-paragraph (4) so as to make it impose a financial penalty of more than the local housing authority could have imposed.

Determination

Appeal Against Financial Penalty

17. In opening, Counsel for the Applicant set out that commission of the offence was not disputed and no issue was taken over service of the relevant notices or the Respondent's compliance with Schedule 13A of the Act. It was accepted the works were not completed by 21 March 2024.

18. The Counsel advanced 2 arguments. The first being that the Applicant had a reasonable excuse for the purposes of s30(4) of the Act or in the alternative the Applicant challenged the level of fine imposed by the Respondent suggesting the proposal form and information and conclusions set out therein were inaccurate and flawed leading to an incorrect level of fine being applied.

19. The Tribunal heard evidence from Mr Nath. He confirmed that when the Improvement Notice was served in June 2023, he was working as a property manager for Urbanpoint, an associated company of the freeholder. Mr Nath suggested when the notice was served it would have been passed to Praxis who were the managing agents for the Applicant in respect of the Property at the time.

20. Mr Nath confirmed his direct involvement began in April 2024 and his initial involvement included direct communications with the Respondent over the Improvement Notice [397]. Mr Nath confirmed shortly after April 2024 he left Urbanpoint and worked for a company unrelated to the Applicant. He returned to join Praxis in February 2025 and resumed his direct involvement and engagement with the Respondent over the required works at the Property.

21. Mr Nath was unable to provide any evidence relating to any steps taken by the Applicant to engage with, or conduct works, during the notice period of the Improvement Notice and was not directly aware of any steps that took place between April 2024 to February 2025 when he was not working for Praxis. Mr Nath was not aware of how many other units of accommodation the Applicant held in addition to the Property and suggested that there would or should have been a property file containing information around what works or engagement were taking place during the periods he did not have direct knowledge around however that information was not available and not before the Tribunal.

22. Mr Nath confirmed that the arrears that had accrued in respect of unpaid service charges had been accruing for some period of time prior to the Improvement Notice being served and that the level of arrears in May 2024 would have accrued over a period of at least five years.

23. Mr Nath confirmed that an e-mail which was incorrectly addressed in October 2025 and therefore not received by the Respondent, contained the entirety of the representations that the Applicant wished to make in response to the Respondent's notice of intention to serve a financial penalty [259]. This email attached the certificate of practical completion demonstrating the works had been completed as of 2 July 2025.

24. In response Mr Bray on behalf of the Respondent opened with submissions that the Applicants proposed reasonable excuse defence should not be accepted. The Respondent arguing a significant amount of time was provided under the Improvement Notice to carry out the works, some 9 months. No appeal had been submitted against the service of that Improvement Notice (nor an attempted appeal made out of time). The Improvement Notice had anticipated the need for the Applicant to potentially engage in a section 20 statutory consultation process and factored in other challenges the Applicant might face. The Respondent highlighting that at no stage did the Applicant seek to engage with the Respondent during the notice period.

25. Further the financial penalty that was subsequently issued was set at a level that was in line with the Respondent's policy document and matrix that was used when setting the level of any financial penalty. The Respondent arguing the Tribunal should be slow to depart from the Respondent's findings.

26. Mr Bray gave evidence on behalf of the Respondent and was questioned over the Respondents proposal form and the notice of intent to issue a financial penalty and the findings an information set out therein.

27. Mr Bray confirmed that the Respondents position on the number of units held by the Applicant was based on personal knowledge and that Mr Christopher O'Dell, a director of the Applicant (who has also signed the application form in this matter) held many directorships registered at Companies House at many different companies which held significant property portfolios, therefore under the Respondent's policy, the Respondent could conclude an association between the Applicant and other companies holding significant stock.

28. Mr Bray was invited to accept that this reasoning was flawed and that the correct finding should have either been that the Property amounted to 1 unit, given it was only the common parts that were in control of the Applicant (all four flats within the Property being granted on long leases) or in the absence of sufficient information to the contrary, the default position under the policy where no information existed was to allocate 2 to 4 units as the appropriate level. Mr Bray did not accept this and felt that in light of Mr O'Dell's association with other companies that held stock and personal knowledge Mr Bray had of other enforcement that may be taking place, including knowledge of charges placed on properties associated with Mr O'Dell's other companies, the Respondent's decision making should be accepted.

29. Mr Bray was questioned around the Respondent's reference to the offence being "on-going" within the financial penalty proposal form and Notice of Intent to issue a financial penalty when the Respondent had been supplied with updating evidence from the Applicant in June 2025 setting out that a lot of works had at that stage been completed and where practical completion had taken place on 2 July 2025. There was no reference at all to these efforts or updates. In response Mr Bray suggested that whilst the reference to the offence being "on-going" is perhaps poorly worded, the reference to the offence being ongoing meant it was "on-going" at the date of the inspection that took place.

30. Mr Bray was questioned on why the Respondent refused to grant an extension of time for compliance. The request was refused in June 2025, Mr Bray suggesting by this stage the Applicant had already had a significant amount of time to complete the required works and no further opportunities were now reasonable. Mr Bray confirmed the delay to starting the process to issue a financial penalty was due to a promotion he had received and the matter being handed over to a new

case officer (Ms Newing) meaning delays had occurred at the enforcement stage.

31. In response to questions around alleged inaccuracies of the Respondent's proposal form and what appeared to be errors or omissions in the form, Mr Bray submitted that was why the notice of intent invited representations from parties subject to enforcement, so they had an opportunity to correct or question the decision making.

32. In respect of the form being signed off twice by Mr Hopkins, Mr Bray suggested this was a case of internal delegations and that there was an error where the form indicated an adjustment to the level of financial penalty to be made due to mitigation or aggravating circumstances.

33. Mr Bray did not accept that as a result of the alleged omissions of factual information or the inaccuracies contained within the form that the ultimate decision and the level of fine applied was inaccurate or had not been properly or fairly assessed.

34. Mr Bray was asked whether in light of the representations that were intended to be made by the Applicant via email in October 2025 and in light of the knowledge and information held now, would that have affected or changed the Respondent's decision making or the level of fine applied. Mr Bray suggested it would not have made any significant difference at all, that completion of the works was necessary regardless and that to suggest engagement and completion of the works after such a period of non-compliance would amount to substantial mitigation was not accurate, at most potentially 5 to 10% in terms of a reduction but that would equally be balanced against the aggravating factors of the delay and non-engagement, so may not result in any change to the ultimate level of fine applied.

35. In closing the Respondent submitted that it was clear the Improvement Notice had not been complied with and the offence was made out. On the facts and evidence before the Tribunal, the reasonable excuse defence should not be found. The Respondent reminded the Tribunal that although the works were ultimately completed, timely action had not been taken when the Improvement Notice was served and as a result a risk at the Property existed that potentially put occupiers at risk for a longer period of time than was reasonable and therefore in all the circumstances not only was it appropriate to issue the financial penalty but the level at which that penalty was set was correct.

36. The Applicant in closing walked the Tribunal through the Applicant's skeleton argument that had been submitted in advance of the hearing, expanding upon the relevant points where appropriate and setting out authority and case law to support the approach it was suggested the Tribunal should take to both the issue of reasonable excuse and the level of financial penalty to be set in the alternative.

Decision

Basis of decision to impose Financial Penalty

37. In accordance with provisions of Schedule 13A Housing Act 2004 (as amended by Housing and Planning Act 2016) the Tribunal is required under this application to effectively conduct a re-hearing of the original decision to issue a financial penalty and if appropriate determine the level of fine to impose. The Tribunal effectively steps into shoes of the Local Authority and must apply the Local Authority's Policy in determining these matters unless there is a good reason to depart from that Policy. If the Tribunal departs from that original decision, it must give clear reason why it has departed from that original decision.

38. The Tribunal is also required to give appropriate weight to the Local Authority's original decision making when applying its Policy to the evidence before it and the issuing of any financial penalty, paying careful attention to the reasons why the original decision was made. (*Waltham Forest London Borough Council v Hussain* [2023] EWCA Civ 405)

39. The Tribunal is not concerned with any challenge to the making of the original Improvement Notice. This application is an appeal against the making of the financial penalty for breach of that Improvement Notice.

40. The Tribunal must be convinced beyond all reasonable doubt that an offence under Section 30 Housing Act 2004 has occurred. As referred to above the Applicant admits breaching the terms of the Improvement Notice and as a result an offence has occurred. This is also established on the evidence presented to the Tribunal. Considering the admissions, and the evidence before the Tribunal, it finds that the Applicant has beyond all reasonable doubt breached the Improvement Notice.

41. The Tribunal is then required to consider if the Applicant has a defence by way of reasonable excuse. Of significance in respect of this application is the complete lack of any explanation from the Applicant around what steps or engagement the Applicant undertook following service of the Improvement Notice on 7 June 2023 to the email from Mr Nath to the Respondent on 18 April 2024.

42. The Tribunal accepts that the defence of reasonable excuse must be approached as a broad question of fact and degree. In *Tabbassam v Manchester City Council* [2024] UKUT 93 (LC), subsequently upheld by the Court of Appeal, it was confirmed that the existence of a reasonable excuse depends upon the particular circumstances facing the landlord and is not confined to cases of impossibility. Equally, however, the authorities demonstrate that the mere existence of practical, financial or administrative difficulties does not automatically establish the defence.

43. There is a complete lack of any evidence to demonstrate any response, action or proactive steps the Applicant may have taken following

receipt of the Improvement Notice. Mr Nath in evidence suggested there should or would be a property file held by the Applicant that might give some insight into what response or steps the Applicant was taking following service of the Improvement Notice however, if such a file exists, nothing was put forward from it as explanation or evidence to show what the Applicant was doing to address the works required under the Improvement Notice.

44. The evidence therefore before the Tribunal is that the first reactive step the Applicant took in respect of the Improvement Notice was on 18 April 2024, over 3 weeks after the notice period expired and the date of when the works were due to be completed under the Improvement Notice (21 March 2024) had passed. No explanation is offered for this complete inactivity or apparent lack of engagement.

45. The offence of breach of the Improvement Notice took place on 22 March 2024. Therefore, on the evidence before the Tribunal, there can be no reasonable excuse made out before 18 April 2024 at the very earliest. However, that email of 18 April 2024 raises queries over the schedule of works which were already overdue, querying the content of the same and questioning if specialists had been involved. Exactly the type of enquires the Applicant perhaps should have been raising shortly after service of the Improvement Notice in June 2023.

46. If the defence of reasonable excuse could be made out simply by a Landlord finally beginning to engage with works required under an Improvement Notice some 3 weeks after the date by which the works were due to be completed, without a shred of evidence to begin to explain prior inactivity or engagement, it would almost certainly make any notice period under an Improvement Notice and the deadlines by which works needed to be complete, almost obsolete in their effect.

47. The Tribunal would expect to see some evidence submitted to show how the Applicant had reacted to the Improvement Notice and to set out what steps it was taking in an attempt to comply with its requirements or equally why it couldn’t take any steps at all towards compliance until April 2024. In the Tribunal’s view this is a fundamental starting point if seeking to establish a defence of reasonable excuse.

48. That is not to say a defence of reasonable excuse cannot be made out, even where proactive steps only begin after the date by which compliance with an Improvement Notice would fall due, but it is entirely fact specific and in most cases, some form of evidence to justify how that position of non-compliance was arrived at would be required.

49. In this application, there is no such justification. The evidence submitted by the Applicant of the scope of the works required, time required to comply with the requirements of the Section 20 statutory consultation period, the difficulty with funding works due to service charge arrears and eventual engagement with the Respondent is all

evidence of consideration and steps taken after the offence had occurred.

50. On the evidence presented by the Applicant, these difficulties would have been almost exactly the same in June 2023 when the Improvement Notice was served. Mr Nath's evidence was that given the level of service charge arrears owed, those arrears would have been present and accruing over a period of at least 5 years. The Tribunal also accepting the requirements of Section 20 Landlord and Tenant Act 1985 needed to be considered, either through compliance with the same or through an application for dispensation, either route requiring reasonable time to complete. However the Applicant provided no evidence to show that it was engaging with those challenges from June 2023, in fact the evidence showing they only began to engage with those challenges from April 2024 at the earliest.

51. The Tribunal finding weight and preferring the Respondent's submission that it was for those exact anticipated potential reasons that the time scale for the works to commence (January 2024) and be completed by 21 March 2024 were put in place. The Respondent clearly being mindful that the Applicant may require time to comply with the requirements set out in the Notice.

52. Further, had the Applicant taken the steps it began to take from April 2024 and engaged with the Respondent during that notice period, keeping them updated, as the Applicant eventually did from February 2025, the Respondent may have been willing to allow more time or consider delaying enforcement if real progress was being made towards compliance. Even if the Respondent did not adopt such a position, the reasonable excuse defence would likely be much stronger.

53. It is for these reasons the Tribunal, on the balance of probabilities, does not find the defence of reasonable excuse made out.

54. In making this finding, the Tribunal has considered carefully the authority of *Perrin v Revenue and Customs Commissioners* [2018] UKUT 156. *Perrin* sets out a four-stage test that the Tribunal is to consider when approaching a suggested reasonable excuse defence. That test is set out below.

> *"(1) First, establish what facts the taxpayer asserts give rise to a reasonable excuse ... (2) Second, decide which of those facts are proven. (3) Third, decide whether, viewed objectively, those proven facts do indeed amount to an objectively reasonable excuse for the default and the time when that objectively reasonable excuse ceased ... (4) Fourth, having decided when any*

reasonable excuse ceased, decide whether the taxpayer remedied the failure without unreasonable delay after that time ...”

55. It is suggested by the Applicant that the defence of reasonable excuse and the facts that give rise to it are that the scope of the works and the professional advice required was substantial, that the section 20 consultation process was mandatory and could not be abridged and therefore would require time to complete, that there were no funds available because of the leaseholders default in meeting service charge demands and that the Applicant kept the Respondent informed and sought an extension of time for compliance with the Improvement Notice.

56. As set out above, the Tribunal has considered that these practical difficulties would have existed at the point the Improvement Notice was served. The Tribunal has already found that the Respondents factored in the time it would take to allow the Applicant to address these difficulties when determining the time scales that applied under the Improvement Notice. That Improvement Notice was not appealed, and no extension of time was sought by the Applicant during that notice period.

57. The Tribunal, as indicated above, has no evidence before it that the Applicant took any steps to address those factors at any stage before April 2024 at the earliest.

58. The Tribunal does accept and agree with the with the Applicants submission that it was not necessarily appropriate for the Applicant to have applied for dispensation under section 20ZA Landlord and Tenancy Act 1985 and that any application would have taken time to be processed by the Tribunal with no guarantee of a favourable outcome. The decision of the Applicant to engage in the section 20 consultation process as opposed to seeking dispensation is a reasonable one in the circumstances.

59. The Tribunal also accepts that the Applicant is under no obligation to self-fund the works required and in a situation where service charge arrears already existed, it is understandable why the Applicant may not have wished to front load the payment of the works required through self-funding.

60. However, in both instances, the Tribunal finds that these challenges are exactly the reason why the Improvement Notice gave approximately 9 months notice to comply with its requirements. This would allow the Applicant to make progress in obtaining expert reports, in completing a section 20 consultation process and in seeking to address service charge arrears. In respect of those service charge arrears, the evidence before the Tribunal was that these were not new and had existed for a number of years prior to the Improvement Notice therefore it is

questionable whether enforcement proceedings should already have been underway in any event.

61. The fact that the Applicant began to engage with the Respondent from April 2024 and that works started to progress in October 2024 is not in the Tribunal's findings something that would amount to a reasonable excuse defence, the Tribunal finding that such engagement should have been taking place after the original improvement notice was served.

62. Therefore in considering the test set out in *Perrin* the Tribunal finds when viewed objectively, the facts relied upon by the Applicant to establish the defence of reasonable excuse are not sufficient and that objectively a reasonable excuse to the offence is not made out on the facts. The Tribunal bases this on the lack of any evidence to suggest the Applicant was taking any steps to address the works required under the Improvement Notice until 18 April 2024 and that the facts relied upon by the Applicant are all steps and engagement the Tribunal finds should have been taken at a much earlier stage in order to establish objectively they amounted to facts which supported a defence of reasonable excuse.

63. The Applicant referred to the authority of *Park Green Investments Ltd v Teignbridge DC* in support of where the Tribunal could find a reasonable excuse existed in a matter where the local authority had enforced an alleged breach of an improvement notice where the Upper Tribunal set aside the financial penalty imposed entirely.

64. The Upper Tribunal accepted that compliance was complicated by factors outside the landlord's immediate control, including issues involving long leaseholders, access, and the practical difficulties of obtaining compliance through litigation. The Upper Tribunal attached significance to the fact that the landlord was attempting to achieve compliance and that proceedings against leaseholders were not necessarily required by the notice.

65. However in this matter there are clear distinguishing factors. The Applicant did not commence works until after the period for completion had expired. Likewise, the Applicant had not sought specialist advice or commenced a consultation process. The Applicant did not seek an extension from the Respondent until well after the date the works had been required to be completed. The reasoning in *Park Green* is therefore distinguished on its facts because the excuse there arose from active efforts frustrated by external factors. A landlord who simply does nothing cannot rely on the same rationale.

66. Another authority cited in support of the Applicant’s reasonable excuse defence is *Sutton v Norwich City Council* [2020] UKUT 90 (LC) (UT) which set out the need for the Tribunal to consider the degree of non-compliance and any explanation offered for it. In *Sutton* the Upper Tribunal stressed that non-compliance with an improvement notice does not automatically justify the highest culpability category. The

degree of non-compliance and the landlord's efforts toward compliance must be examined.

67. However, again *Sutton* can be distinguished on its facts where the landlord in that case had made substantial progress toward compliance with the improvement notice during the notice period. A key feature favouring the appellants in *Sutton* was that they were not ignoring the notices and had made genuine efforts to comply but had been frustrated in those efforts.

68. That contrasts sharply with the Applicant in this matter who on the evidence presented appeared to ignore the notice and the Respondent and took no steps to start works or request an extension or appeal the improvement notice following its service upon them. In those circumstances, *Sutton* arguably supports the Respondent rather than the Applicant because it expressly contrasts active engagement with simple disregard of enforcement requirements.

69. There has been no challenge to validity of the Notice issued by the Respondent in respect of its service, content or compliance with the requirements set out in Schedule 13A Housing Act 2004 (as amended by Housing and Planning Act 2016) however based on the written evidence of the Respondent and the written evidence of the Applicant, along with the submissions made by the parties at the hearing, the Tribunal finds the Respondent complied with the requirements of Schedule 13A and the Notice served was valid for that purpose.

70. In light of the Tribunal finding that beyond all reasonable doubt an offence under Section 30 Housing Act 2004 has occurred, with no defence made out on balance of probabilities, the Tribunal is satisfied the Respondent was able to apply its Policy for imposing financial penalties and was able to choose to issue a financial penalty under the provisions of s249A Housing Act 2004 as an appropriate remedy.

Level of Fine Imposed

71. In determining the level of fine to impose on the Applicant the Tribunal adopts and follows the Respondents' Policy and framework therein [276].

72. Under the Policy it is necessary to determine four matters in order to then determine the starting level of fine to impose. Those four areas are Culpability, Track Record, Number of Units within the Landlord's entire stock and Level of Harm.

73. The Policy then allows for an adjustment to be made to the starting level of fine if there are any relevant mitigating or aggravating factors.

74. In applying the Policy the Tribunal is still conducting a rehearing of the original decision therefore whilst the Tribunal can consider the

Respondents reasoning behind how it has applied its own policy and give due weight where appropriate to that decision making the Tribunal makes its own findings and own determinations. (*Waltham Forest London Borough Council v Hussain* [2023] EWCA Civ 405)

75. Therefore when considering the Respondents decisions as set out within the financial penalty proposal form [345] the Tribunal does acknowledge and, in some instances, agree with the Applicant's criticisms of the way that form was completed and the information the Respondent considered as part of its decision making was in certain respects lacking. As a result, where indicated, the Tribunal attaches little or no weight to parts of that form.

76. The Tribunal accepts on the evidence presented by the Applicant that the works required were practically completed on 2 July 2025. This was more than three months before the notice of intent to issue a financial penalty. The Applicants attempted representations set out in an e-mail dated 22 October 2025 [259] were not received by the Respondent. This was due to an error in the email address used by the Applicant. The Tribunal can and does consider that fresh information when making its decisions and applying the Respondent's Policy.

77. The Tribunal finds that the Respondent should have reasonably been aware and factored into its original decision making, the update provided to the Respondent regarding the progress of the works being made and that only minor outstanding works were required by May 2025.

78. The Tribunal also accepts and agrees with the Applicant's criticisms of the way the form was authorised, with clear errors in respect of Section 8 where a Director has indicated the financial penalty should be varied but then stated a variation is not applicable. It is incumbent when issuing financial penalties that the Respondent ensures forms are completed accurately and wherever possible free from errors given the significant penalties that potentially flow from the application of the Policy and the decision to implement financial penalties.

79. However as indicated above, where this is a rehearing and the Tribunal is substituting its own decision making in replace of the Respondent, the Tribunal is able to attach whatever weight it sees fit to the original decision making process when determining what level of fine should apply and how it applies the Respondents Policy.

Culpability

80. The Respondent set the initial Culpability level at "Medium". This was based on the witness statement evidence of Mr Bray submitted as part of the investigation into the breach of the Improvement Notice.

81. "Medium" is defined as *"This category applies to offences Permitted through an act or omission that a person exercising reasonable care* *would not commit. Any person or other legal entity operating as a landlord or agent in the private rented sector is running a business and is expected to be aware of their legal obligations".*

82. In summary the Respondents evidence was based on inspections of the property on 17 April 2024, 20 June 2024 and 6 May 2025 which identified that the works required under the Improvement Notice had not been completed. It further acknowledged that the Applicant had engaged with the Respondent at that time and by October 2024 was keeping the Respondent updated.

83. In response the Applicant submit that the appropriate level should be "Low". "Low" is defined as "*where there was fault on the part of the offender, but significant efforts had been made to secure compliance with the law, but those efforts were not sufficient*".

84. The Applicant submitting that by the time the Respondent was considering the level of financial penalty, the Applicant had taken proactive steps to conduct and complete the work with practical completion taking place on 2nd July 2025, with clear significant efforts made to complete the works required under the Improvement Notice.

85. The Respondent quoting the authority of *Sutton* set out the following remarks from the Deputy President:

"The Council's penalty matrix identifies the level of culpability as high where a clear requirement to take action has been ignored, such as where an improvement notice has not been complied with. We do not dissent from that as a general rule, but it is necessary to consider the degree of non-compliance and any explanation offered for it. … This is not a case of the Council's stipulations being ignored, but rather of the appellants not completing the required work within the time allowed despite having made good progress with it … he appears to have appreciated the need to comply with the notices, and to have made efforts to do so."

86. The Tribunal considered carefully the Respondents Policy and its definitions of "Medium" and "Low" culpability and the submissions and evidence of the parties. The Tribunal finds on the evidence before it that the level of culpability to be applied is medium.

87. The reason why the Tribunal makes this finding is that firstly the Respondent's policy, when considering the definition of low culpability states that *"significant efforts **had been made** to secure compliance with the law but those efforts were not sufficient"* (emphasis added).

88. On the evidence before the Tribunal there is no basis to find significant efforts "*had been made"* to secure compliance with the Improvement Notice. The evidence demonstrates that there had been no efforts made

so it could not be said the efforts attempted to comply with the Improvement Notice were not sufficient.

89. Considering the Deputy President's comments in *Sutton* the Tribunal has considered the degree of non-compliance and any explanation offered for it. In this instance there simply is no explanation offered for it during the relevant period of time for compliance under the notice.

90. This appears on the evidence to be a case where the Respondents stipulations have simply been ignored and not a case where the Applicant has simply not completed the required work within the time allowed having made good progress with it nor is there any evidence to show an appreciation of the need to comply with the notice at the time it was served.

91. In considering the definition of medium culpability and ensuring sufficient weight is given to the Respondent's original decision but also considering information that was not before the Respondent such as the ongoing attempts at compliance and the fact there was practical completion on the 2nd of July 2025, the Tribunal finds that medium is the appropriate level of culpability.

92. When looking at the definition of medium the Tribunal finds this meets fairly and proportionately with the facts and evidence before it and that the Applicant as a reasonable landlord had it been exercising reasonable care would not have committed the breach and the Applicant should have been expected to be aware of its legal obligations. The evidence of the Respondent shows a clear breach and at multiple inspections thereafter an ongoing breach albeit one that was eventually remedied as of 2 July 2025.

Track Record

93. The parties did not raise any arguments disputing the findings of the Respondent on the Applicant’s Previous Track Record for the purposes of determining the level of fine.

94. The Tribunal finds on the evidence provided by the parties that the appropriate category attributed to this factor in the original determination was correct and the Tribunal applies the same finding, namely there is no previous track record of offending by the Applicant.

Number of Units

95. The original decision by the Respondent on the proposal form was that the appropriate portfolio size was 20 or more units. Tthe Respondent based this decision on research conducted by Mr Bray into Mr O’Dell’s directorship and records at Companies House, some of which indicated

charges being applied to properties held by different companies to the Applicant that Mr O'Dell was a listed director of.

96. The Applicant criticises this decision making firstly on the basis that there was no evidence before the Respondent that these companies held any stock and that the simple fact charges were registered at Companies House was not sufficient evidence to safely conclude an association by Mr O'Dell and the Applicant with other companies owning other properties.

97. The Applicant suggested that the Policy and its proper application was clear that where this Property was held by the Applicant in effect as only being responsible for common parts of a building, containing one or more flats, it should be counted as one unit of accommodation where the Applicant was only concerned or responsible for the common parts.

98. If that was wrong, under the Respondent's own Policy, if it concluded it did not have sufficient information as to whether the Applicant had any other properties, an assumption should be made to default to 2 to 4 units.

99. The Tribunal agrees with the Applicant's criticisms of the Respondents original decision making in this regard. Based on the information available to it the original decision based on the layout and ownership of the building should have either been one unit of accommodation or if the Respondent felt it was unable to assess properly the number of units held by the Applicant the default of two to four is purposely set out to allow a determination in default.

100. The Respondents own research at Companies House into Mr O'Dell and associated companies was not sufficient information and did not amount to sufficient evidence to safely conclude 20 or more units was the correct finding.

101. The Tribunal is of course conducting a re-hearing based on information and evidence before it at the date of the hearing. The Tribunal found it surprising that in evidence the Applicant did not directly address this point, it seeming to the Tribunal a fairly straightforward matter of fact that the Applicant could easily provide evidence on. This is no criticism of Mr Nath who was open and honest about his lack of knowledge over how many units of accommodation the Applicant held.

102. The Tribunal therefore has considered the best evidence available before it when trying to make a finding of fact in relation to the number of units held by the Applicant. In this regard the Tribunal finds that the best evidence is the application form submitted by the Applicant completed by Mr O'Dell himself, signed with a statement of truth, which confirms that the number of units as 20 or more is accepted as a matter of fact.

103. The Applicant in submissions suggesting that this was a lay response and the Tribunal should determine the point on the material now before it. The Tribunal believes the application form can stand as evidence and that the question of unit size is not something that a director of a property-owning company like the Applicant would face difficulty in understanding. Therefore, this admission is accepted as evidence and the Tribunal finds the appropriate number of units to be 20 or more based on the evidence of the Applicant.

104. Further the Applicant made submissions that the Respondents Policy did not distinguish between a landlord letting on assured tenancies, and therefore drawing market rents, as opposed to a freeholder responsible only for common parts of a building. It was suggested that where the Policy does not make that distinction, the Tribunal should not apply the Policy and could depart from it.

105. Whilst the Tribunal agrees it has the authority to depart from a policy where it is arbitrary or manifestly irrational, in this instance the Tribunal declines to do so. When viewing the Policy as a whole it allows for mitigating or aggravating factors to be applied and it is a reasonable position as a whole for the Respondent to consider such factors as the nature of the lettings or ownership structure as part of those mitigating or aggravating factors if they are raised within the same.

106. The number of units held by a landlord can be a relevant factor when determining an appropriate level of financial penalty as it seeks to establish a difference between landlords owning very few properties as opposed to larger landlords with significant property ownership and the differing expectations that could be relevant as a result. It cannot be said that the number of units held by a landlord is either an irrational line of enquiry or something arbitrary.

107. As a result, the Tribunal does not find it necessary to ignore this part of the policy.

Level of Harm

108. The Respondent originally attributed a harm level of Level 2 as defined in their Policy. The Respondents position was that the facts meet the criteria for Level 2 based on the offence being associated with an "extreme harm outcome" being the risk of death associated with fire and the likelihood of a fire/harmful event being low. This was based on the evidence of the HHSRS inspection recorded by the Respondent prior to serving the Improvement Notice.

109. The Applicant suggested that the inspection, its findings and its scorings meant that the fire hazard at the property amounted to a 1 in 320 chance of occurring and that within the totality of the Notice the extreme harm outcome only applied to one of the three hazards

identified and that could not support a finding of an extreme harm outcome.

110. The Applicant suggested that Level 1 would be the correct grading. Level 1 being defined as follows:

> *This category will be used when the risk of harm does not fall within the level 2 Level 3 or level 4 categories.*
>
> *Any offence associated with the operation of an unlicensed premises under the HMO and selective licencing regimes will usually fall into this category if there is no particular risk of harm associated with the condition or management of the property concerned.*

111. Having carefully considered the evidence and submissions made, the Tribunal agrees with the Respondent on their assessment of the harm associated with the facts of this case, preferring the evidence of the Respondent on this point.

112. The Tribunal finds that the Improvement Notice was served on the basis of safety issues relating to a fire risk as well as issues relating to damp and mould at the Property. Therefore in assessing harm, it is entirely reasonable to conclude that fire does lead to the potential for an extreme harm outcome. It is not unreasonable to suggest the likelihood of a fire at property (ie a harmful event) occurring was low given the likelihood scoring that the inspection recorded.

113. The Tribunal attaches weight to the Respondents evidence and findings on this issue. Where an Improvement Notice has been served in respect of a fire safety issue, it is not unreasonable or irrational to deem a fire as an extreme harm outcome. The Respondent has then acknowledged the likelihood of that event occurring as low and therefore level 2 was an appropriate banding for the risks associated with the requirements under the Improvement Notice.

114. The inspection was conducted applying the appropriate HHSRS scoring and bandings. Those findings are not challenged, the Applicant instead disagreeing with the assessment of those findings. In light of the inspection findings and the assessment conducted of the risks at the Property, the Tribunal prefers the decision making of the Respondent on this point and attaches weight to the original decision made.

115. The Respondents policy leaves level 1 available to it where the risk of harm does not fall into one of the other levels of harm. The Respondents finding here is reasonable based on the risk of harm with a fire being extreme. The level 1 category gives insight into where it may be appropriate by reference to operation of unlicensed premises under the HMO and selective licencing regimes, where there is no particular risk of harm associated with conditions at the property. The

Respondents view that a risk of fire did not sit within that definition is entirely reasonable and is a decision the Tribunal adopts in this instance.

116. Applying the above findings in each category to the Respondent's Policy and matrix for determining the level of fine, the Tribunal finds the starting fine to be £9,000.

Adjustment due to Mitigating or Aggravating factors

117. The Respondents Policy covers changes that might be affected to the starting level of fine within one section entitled "Determining whether adjustment of the financial penalty is appropriate". The assessment is designed to be taken as a whole, accounting for any mitigation that might apply along with any aggravating factors, to give a final potential increase or decrease to the starting level of fine.

118. The Respondent sets out in the decision making form that they concluded there were no mitigating or aggravating factors. As set out above the Applicant had attempted to e-mail representations to the Respondents notice of intention to impose a financial penalty however due to an error in the e-mail address those representations were not received.

119. The Tribunal when questioning Mr Nath on behalf of the Applicant heard evidence that the e-mail and its attachment, which was essentially confirmation of the practical completion of the works on 2 July 2025, was the full extent of the representations the Applicant wished for the Respondent to consider.

120. In submissions, the Applicant suggested that the Respondent failed to consider mitigation entirely and should have considered information it had been provided that the works as of May 2025 were progressing and nearing completion. It was submitted that mitigating factors that should be given weight were the practical completion of the works on 2 July 2025, the fact that four professional firms were involved in the execution of the work, that from April 2024 there was sustained cooperation from the Applicant to the Respondent, that the Respondent refused a short extension of time for compliance in May 2025, that there was no financial benefit to the Applicant from the delay and there is an absence of any aggravating factors.

121. The Applicant did not put forward any submissions or evidence relating to possible hardship that may be suffered by the Applicant nor details around the Applicant's financial circumstances.

122. The Tribunal as set out above accepts that the original decision by the Respondent did not take into account information that on a reasonable analysis should have been before the Respondent, particularly in relation to the progressing works as of May 2025. The Respondent

suggested that was why the Respondent invited representations from the Applicant to the Notice of Intent, to essentially correct information that was not accurate or that they wish to challenge in the decision-making process. The Tribunal does not agree and the Tribunal believes it's reasonable when conducting an exercise that involves the assessment of, and consideration of, issuing a financial penalty that the Respondent should consider all factors that it should reasonably be aware of when making such a determination.

123. The Tribunal in any event is able to make a fresh consideration of the issue based on the evidence and submissions before it at the time of the hearing and does so accordingly, which now includes the email from the Applicant dated 22 October 2025 attaching the practical completion certificate and the information from May 2025 that works were well underway and nearing completion.

124. The Tribunal asked Mr Bray if the suggested mitigation put forward by the Applicant if now accepted and the Respondent had been aware of the same, would it have made any difference to the outcome. Mr Bray suggested that he did not consider those factors put forward in mitigation as being significant and Mr Bray suggesting that any minor percentage reduction for those factors put forward in mitigation would likely be offset as a result of the failure to comply with the Improvement Notice, the considerable time still taken thereafter to comply with the Notice, that there was no reasonable excuse for not complying with the Notice and that no appeal was made against the serving of the Notice in the first place. Mr Bray also reminding the Tribunal that by failing to comply with the Improvement Notice it did put people's safety at risk and that should not be forgotten, timely action being required where formal notices were served in relation to safety of properties.

125. The Tribunal has carefully considered the submissions of both the Applicant and the Respondent in respect of mitigating and aggravating factors. Whilst the Tribunal accepts that the original decision should have considered progress being made at the property and the Tribunal further considers the content of the e-mail dated 17 October 2025 providing practical completion in mitigation, the factors being relied on by the by the Applicant as mitigation do not in the Tribunal's view amount to mitigation of any significant or substantial weight.

126. The Tribunal preferring the evidence of the Respondent and Mr Bray and the impact it may have had if any on the Respondents ultimate decision in this regard. The Tribunal agrees that when considering mitigation, mitigating factors might include steps a party may have been prevented from taking or unforeseen obstacles that arose meaning difficulties in the compliance with the notice. The factors set out by the Applicant such as practical completion occurring and an improved engagement with the Respondent are not mitigation against the offence but steps that the Tribunal finds the Applicant was required to take in order to comply with the Improvement Notice regardless.

127. As set out above, the requirement to engage with four professional firms existed as much when the Improvement Notice was served as it did at the point in time the Applicant finally engaged with them. Further The Tribunal does not find engagement with the Respondent local authority to be a mitigating factor.

128. Therefore, on balance in considering the evidence put forward and the submissions made on mitigation, the Tribunal finds that it does not make any adjustments on the basis that as set out above

129. The eventual completion of the works has little relevance to the culpability for the original offence. The offence was complete upon failure to comply by the specified date (subject to any reasonable excuse defence). What happened some significant time after that period expired does not explain why compliance did not occur when required.

130. The fact that the Respondent eventually carried out the works does not demonstrate a reasonable excuse for the original breach. Nor does it materially reduce culpability where there is no evidence of proactive steps towards compliance during the notice period. At most, it demonstrates that the breach was eventually brought to an end.

131. Little weight is attached to the eventual completion of the works. The Applicant merely did, over 12 months later, what it was required by law to do by the date specified in the Improvement Notice. There is no evidence of any contemporaneous effort to comply, any engagement with the authority, any challenge to the improvement notice, or any unforeseen obstacle preventing compliance. In those circumstances, the eventual works do not significantly mitigate the seriousness of the original breach.

132. The Tribunal notes the opening part of the Policy talks about being fair and proportionate and refers to both aggravating factors and mitigation. If substantial mitigation were routinely awarded simply for completing works long after the compliance date, there would be a risk of undermining the statutory purpose of Improvement Notices. The regime is designed to secure remediation within the specified period, particularly where occupiers may be exposed to hazards. A landlord who ignores a notice and only acts after is in a very different position from one who actively strives to comply but encounters genuine difficulties.

133. The Applicant did not appeal the notice, seek to vary it, request additional time for compliance, or engage with the local housing authority regarding any difficulty in carrying out the works. Nor has any evidence been produced of unforeseen events, practical impediments, third-party obstruction, or other exceptional circumstances which prevented compliance within the prescribed period.

134. The evidence demonstrates that the works were only completed over a year after the expiry of the compliance period. The offence arose from the failure to comply with the notice by the date specified. The fact that the Applicant ultimately carried out the required works does not explain that failure.

135. Whilst it is preferable that the hazards were eventually remedied, the Tribunal does not regard the eventual completion of the works as significantly reducing the seriousness of the original breach. The Applicant merely did, substantially out of time, what it had already been required to do. In the absence of evidence of meaningful attempts to comply during the notice period, or circumstances amounting to a reasonable excuse, the late completion of the works attracts limited mitigating weight.

136. The Tribunal finds when assessing all the factors considered, both aggravating and in mitigation, that on balance no reduction or increase to the fine should be applied, The Tribunal on balance feeling the starting point level of fine being both fair and proportionate in all the circumstances.

137. The Tribunal therefore finds the Total fine to be applied is £9,000 with no adjustments to be made.

RIGHTS OF APPEAL

138. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case by email at rpsouthern@justice.gov.uk

139. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

140. If the person wishing to appeal does not comply with the 28- day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28- day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

141. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.