



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

Case reference : **BIR/00CS/HNA/2020/0002**

HMCTS code (paper, video, audio) : **P:PAPERREMOTE**

Property : **109 Sydenham Road, Smethwick, West Midlands, B66 2DF**

Applicant : **KG Inc Limited**

Representative : **Kiran Singh Gulati**

Respondent : **Sandwell Metropolitan Council**

Type of application : **Appeal against a Financial Penalty under s249A of the Housing Act 2004**

Tribunal members : **Tribunal Judge D. Barlow
Tribunal Judge D. Jackson
Tribunal Member Mr P. Wilson**

Date of decision : **2 June 2020**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote hearing on the papers which has been consented to by the parties. The form of remote hearing was P:PAPERREMOTE, A face-to-face hearing was not held because it was not practicable and no-one requested it. No physical property inspection was undertaken although publicly available online street view information was accessed. The documents that I refer to are contained in the witness statements and bundles of evidence submitted by the parties, the contents of which were considered by the Tribunal.

DECISION OF THE TRIBUNAL

I. The Tribunal is satisfied that the Applicant has failed to establish on the balance of probabilities that it had a reasonable excuse for not complying with the improvement notice dated 27 February 2019.

II. The Tribunal finds that the Applicant did not comply with the requirements under the improvement notice to start and complete the specified works by the due dates, and its failure continued beyond the date of the Councils final inspection on 24 April 2019. The Tribunal is satisfied beyond reasonable doubt that the Applicant had committed the offence of failing to comply with the improvement notice dated 27 February 2019

III. The Tribunal decides that an amount of £5000.00 is an appropriate financial penalty for the offence to be paid within 28 days.

BACKGROUND

1. The Applicant appeals against financial penalty notice dated 12 December 2019 made under section 249A of the Housing Act 2004 imposing a civil penalty of £5000.00 for an offence of failing to comply with an improvement notice dated 27 February 2019 which the Respondent says was committed on 22 April 2019 and ongoing beyond the 24 April 2019, contrary to section 30 of the Housing Act 2004.
2. The Appeal is to be by way of a re-hearing of the Council's decision and was heard on 17 April 2020.

THE LAW

3. The matter under Appeal is a financial penalty imposed on a person under section 249A of the 2004 Act for failing to comply with an improvement notice.
4. Prior to imposing a financial penalty, the Council must give an Initial Notice of intent and a Final Notice. Schedule 13A to the 2004 Act contains the requirements for these notices.
5. The Council can only 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.

6. Section 249A(2) defines relevant housing offence which includes a failure to comply with an improvement notice.
7. Only one financial penalty may be imposed on a person in respect of the same conduct. The maximum penalty is £30,000. The imposition of the penalty is an alternative to prosecution for a “relevant housing offence”.
8. Where an improvement notice becomes operative, the person on whom the notice was served commits an offence if s/he fails to comply with it.
9. If no appeal is brought against an improvement notice, section 30(2)(a) of the 2004 Act provides that compliance with an improvement notice means that the person must begin and complete the remedial action in relation to each hazard by the dates specified in the notice.
10. Section 15(6) of the 2004 Act provides that if no appeal is made within the relevant period, the notice is final and conclusive as to matters which could have been raised on appeal.
11. Under section 30(4) of the 2004 Act it is a defence that the person had a reasonable excuse for failing to comply with the improvement notice.
12. Paragraph 10(12) of schedule 13A of the 2004 Act provides that a Council must have regard to any guidance given by the Secretary of State about the exercise of its functions to impose financial penalties. In this regard the Secretary of State has issued “Guidance for Local Authorities: Civil Penalties under the Housing and Planning Act 2016 (April 2018) (“The Guidance”).
13. Paragraph 3.5 of “The Guidance” sets out a list of factors to be taken into account when assessing the level of the penalty:
 - Severity of the Offence
 - Culpability and track record of the offender
 - The harm caused to the tenant
 - Punishment of the offender
 - Deter the Offender from committing similar offences
 - Deter others from committing similar offences
 - Remove any financial benefit the offender may have obtained as a result of committing the offence.
14. The person on whom the penalty is imposed may appeal to the Tribunal. An appeal is by way of re-hearing. The Tribunal can confirm, vary or cancel the final notice.

THE PROPERTY

15. No physical inspection was carried out but online street view information shows that the Property, known as 109 Sydenham Road, Smethwick, Sandwell, West Midlands, B66 2DF, comprises a two storey end terrace house with brick walls under a pitched roof built probably around the end of the nineteenth century. To the side there is a large single-storey attached structure with brick walls under a low pitched roof with felt covering built at a later date. This structure has large metal double doors to the front elevation and the front section was clearly built for use as a garage (there is an adjacent dropped kerb). KG Inc Limited (Company No. 10195660) holds the freehold to the Property under Title Number WM294504.

THE EVIDENCE/PARTIES SUBMISSIONS

16. The Respondent's evidence consisted of a witness statement dated 5 February 2020, provided by Amjad Khan, a Citizen and Consumer Protection Officer (Accommodation), employed by the Respondent council, which exhibited 21 documents **AK1 - AK21**
17. The Applicant's evidence consisted of the application with supporting documents and a witness statement dated 17 March 2020, provided by Kiran Singh Gulati, the sole director and 100% shareholder of the Applicant, which exhibited 8 documents **KG1 – KG 8.**

The Tribunal considered the submissions of the parties.

The local authority's evidence

18. On 16 November 2018 Mr Khan inspected the Property following receipt of a report of suspected overcrowding from the Council's waste team. He carried out a full Housing Health and Rating System Inspection under the 2004 Act. The inspection revealed Category 1 hazards of risk of falling between levels and Category 2 hazards in respect of food safety, domestic hygiene, structural collapse and falling elements [AK7].
19. On 21 November 2018 Mr Khan sent an email to the Respondent notifying him that hazards were identified at the Property. The hazards identified at that time were substantially the same as those set out on the Improvement Notice [AK9]. Mr Khan states that a notice of intent to serve an improvement notice under s11 or 12 of the 2004 Act, was also sent to the Respondent on 28 November 2018, but no copy of that notice is exhibited to his statement. On 20 February 2019 Mr Khan re-inspected the Property and found that the hazards remained.
20. On 25 February 2019 Mr Khan discussed enforcement options at a case conference and determined that an improvement notice should be served on the owner.
21. On 27 February 2019 an Improvement Notice under sections 11(2) and 12(2) of the 2004 Act was served on KC Inc Limited at its address for service, 71-75 Shelton Road London WC2H 9JQ The Notice required the Respondent no later than 1 April 2019, to carry out the works specified Schedule 2 and to complete them within a period of three weeks from that date (22 April 2019). The notice also advised the Respondent that it had a right of appeal against the Notice to the Tribunal [AK10].
22. The works specified in Schedule 2 were:
 - **Front bedroom:** Provide and fit a child safe window restrictor to top hung casement window to limit the opening to approximately 100mm and the restrictor should be overridden in the case of emergency.
 - **Stair balustrade:** Reduce the spindle spacing to approximately 100mm.
 - **Back bedroom:** Remove the heater or make fittings safe.
 - **Front living room:** Remove the redundant fire and make good fireplace and seal gas connection.
 - **Rear living room:** Remove the redundant fire and make good fireplace and seal gas connection
 - **Kitchen:**
 - Provide and fit edging strips to worktops.
 - Replace the damaged worktop.

- Repair wall plaster beside back door.
 - Replace the broken floor tiles and complete the missing tiles by the back door.
 - **Garage and garden single storey extension:**
 - Repair all the roof covering to the extended structure.
 - Repair internal and external damaged timber to the structure.
 - Repair all the brickwork to the extended structure, toilet and store room.
 - Repair/replace the damaged doors and the door frames.
 - Provide missing front gutter, gutter stop-end and a down pipe to garage roof.
 - **Gas Safety Certificate:** Provide a gas safety certificate.
 - **Electrics:** Engage an NICEIC/ECA or NAPIT registered engineer to provide a Periodic Inspection Report complying with BS7671:2008 (as amended) (2011) and IET Wiring Regulation 17th Edition in respect of electrical installation at the property. A certificate must be produced indicating the safety of the electrical installation after completion of the work.
23. On 24 April 2019 Mr Khan re-visited the Property and was admitted by a new tenant, Ms Mirea. None of the works specified in the Improvement Notice had been commenced or completed [AK11].
24. On 25 June 2019 Mr Khan sent a section 16 request for information to the Respondent and to his property agent Home from Home Agency Limited (“HH”) [AK12], both failed to reply. However, on 27 June 2019 Mr Scott Worrall of HH emailed Mr Khan to say that he understood the owner had completed all the required work in the improvement notice. Mr Khan responded on 28 June 2019 emphasising the importance of completing the works and attached further copies of the photographs taken at the inspection. [AK13-14]
25. On 19 July 2019 Mr Khan chased the Respondent and HH for the information requested in the s16 notice [AK15]. The lack of response led Mr Khan to serve a further information notice on the Respondent and HH.
26. On 16 October 2019 a panel meeting was held to discuss the outstanding repairs. The improvement notice had not been complied with but a further visit was considered necessary to assess the potential effect of the hazards on any children living there. However, when Mr Khan re-visited later that day it appeared that the new tenants had no children.
27. In determining the level of civil penalty Mr Khan had regard to the West Midlands civil penalty matrix, developed by officers from a number of authorities to provide consistency across the region. The matrix provides an indicative minimum tariff under the various offence categories, with the final penalty adjusted to take account of any aggravating and/or mitigating factors. The Council views failure to comply with an improvement notice as a significant issue exposing the tenants to one or more significant hazards. A civil penalty of £5000.00, which is the minimum tariff for this offence, was determined. No additional premiums were added [AK16].
28. On 23 October 2019 Mr Khan served a Notice of Intent to issue a financial penalty of £5000.00 on Kiran Gulati (not KG Inc Limited) at the Respondent’s address for service, 71-75 Shelton Street London, WC2H 9JQ [AK17].

29. On 11 November 2019 Mr Gulati, left a message for Mr Khan to contact him about the notice, which he did on 14 November 2019. Mr Gulati informed Mr Khan that the Property had been sold in October 2019 and that he believed therefore he was no longer responsible for non-compliance with the Improvement Notice. Mr Khan states that he explained to Mr Gulati *“that if KG INC LTD owned the property during the period that the Improvement Notice required works to be completed, then KG INC LTD would still be responsible for non-compliance with the notice.”* Mr Khan asked for proof of ownership between when the improvement notice was served to when it expired.
30. On 14 November 2019 Mr Gulati emailed a copy of documents as proof of sale of the property on 30 September 2019 and asked for confirmation of his liability. [AK18]. On 18 November 2019 Mr Khan emailed Mr Gulati to say that a final decision would be made by a panel in the light of his new evidence. [AK19].
31. On 22 November 2019 the Notice of Intent expired and on 12 December, at a panel meeting with Mr Khan, the documents provided by Mr Gulati were reviewed along with the overall case. The panel decided that as the offence had been committed while KG Inc Limited was responsible for compliance with the improvement notice the council should proceed with service of a final notice.
32. On 12 December 2019 Mr Khan served a Final Notice of issue of a Financial Penalty on KC Inc Limited for £5000.00.

The Applicant’s evidence

33. On 7 January 2020 the Applicant appealed against the financial penalty on two grounds:
 - (i) The property was under a management agent, Home for Home Agency Limited, who were responsible for the full management of all aspects of the property.
 - (ii) We were informed by Mr Khan from Sandwell Metropolitan Borough Council that there would be no further action as we no longer own the property.
34. Mr Gulati states that he is the director and 100% shareholder of KC Inc Limited, which he purchased on 18 May 2017, as a property suitable for letting. Mr Gulati retained the selling agents (Paul Jackson) to manage all aspects of the lettings for a fee, because he did not live in the local area.
35. Mr Gulati acknowledges receiving correspondence from the Respondent in October 2018 concerning access. His assistant Mr Mahmud then experienced difficulty making contact with Paul Jackson to arrange the inspection and they decided to appoint new agents (HH), to take over management of the Property. HH were instructed *“to inspect and carry out required maintenance”*. They were also instructed to market the property for sale and told that the Respondent would contact them to inspect the property.
36. Mr Gulati confirms that HH instructed several contractors to *“carry out repairs and maintenance at the property including, but not limited to, pest control, rubbish removal, cleaning, repairs, painting gas safety check and*

certification for which we were invoiced.” [KG2] Mr Gulati was informed by HH on 5 November 2018, that the repairs would be complete by the following weekend [KG3]. The email from HH reads “Please see email below from pest control. We should have the house all ready by this weekend. It’s taken a bit longer because of the amount of bugs and rodents insider the house. We will start painting and repairs tomorrow. Will need new carpets downstairs also. Please let me know you are happy for this to be done.” The pest control report dealt with an infestation of rats, mice and cockroaches at the property.

37. Mr Gulati received the email of 21 November 2018 from Mr Khan detailing the hazards found on his inspection and states that he instructed HH to carry out the repairs highlighted in the letter sometime in December 2019. Mr Gulati states that Mr Worrall of HH confirmed that he would deal with the repairs and liaise with the Respondent. Mr Gulati was then abroad until the 3rd week of January 2019. On his return he learned of the Respondents request for a re-inspection, which Mr Mahmud, his assistant, had instructed HH to facilitate.
38. On 31 January 2019 Mr Gulati sought confirmation from Mr Worrall that this was being dealt with and states that he was informed it was. He exhibits an email exchange as confirmation [KG4]. The email exchange at KG4 reads:
 - 31 January 2019 14:46 Kiran to Scott Worrall – *“Please see the doc one from enforcement and one for the council tax I thought this was dealt please can you look urgently”*
 - 31 January 2019 14:56 Ellis (admin at HH) to Kiran – *“Scott is out of the office today but I will forward the enforcement document on to him”*
39. Mr Gulati then states that on 11 February 2019 Mr Worrall emailed Mr Khan to confirm the works had been completed. The email timed at 13:49 reads *“With reference to your letter to the landlord dated 28 January 2019. As managing agents of the property 109 Sydenham Road, we can confirm that the improvements to the property have been completed.”* Mr Khan responded at 13:56 to ask that a date and time for access to the Property to check the completed works, be arranged.
40. In March 2019 Mr Gulati received further correspondence from the Respondent which he discussed with Mr Worrall who confirmed that he was liaising with the council to arrange an inspection to view the improvements. [KG6]. A memorandum of sale of the Property was produced by HH dated 21 March 2019.
41. Mr Gulati states that in July 2019 Mr Mahmud received an email concerning enforcement. He spoke to Mr Worrall who confirmed that he was dealing with the Respondent on the notice. The sale of the Property completed on 30 September 2019.
42. In November 2019 Mr Gulati acknowledged he received the Notice of Intent to issue a financial penalty. He called Mr Khan on 11 November 2019 requesting a call back. Mr Khan returned his call on 14 November 2019, when Mr Gulati explained that the Property had been sold at the end of September 2019. Mr Gulati says that he asked Mr Khan if he was *“still liable for the penalty and he informed me that I would not be if I was no longer the owner”*. Mr Khan also asked for proof of sale which he forwarded on the 14 November 2019. Mr Khan acknowledged receipt and said that the case

would be presented to a panel for the final decision to be considered “*in the light of new development coming forward.*” [KG8]

Respondents response to the grounds of appeal

43. Appeal point (i) Mr Khan statement contends: a) that there is no evidence of a repairing lease agreement for the property, b) points to the email from Scott Worrall, referred in paragraph 27 above, confirming his understanding that owner had completed the works c) states that the Applicant and HH had ample opportunity to clarify ownership/management in response to the s16 notices but failed to do so; and d) confirms that KG Inc Limited did not appeal the improvement notice.
44. Appeal point (ii): (a) Mr Khan confirms that he said any further action would be considered by the council enforcement panel, (b) on 14 November 2019 Mr Khan received a document showing that the property had been sold on 30 September 2019 [AK18]. The non-compliance offence occurred on 24 March 2019. Mr Khan replied to Mr Gulati’s email on 18 November 2018 to clarify that a decision would be taken by the enforcement panel[AK19].

CONSIDERATION

45. The Tribunal considers first whether the procedural requirements of section 30 and schedule 13A of the 2004 Act have been met.
46. The improvement notice was sent on 27 February 2019 to The KC Inc Limited. The notice informed the recipient of its right of appeal to the First-tier Tribunal. No appeal was made within the period of 21 days which meant that the improvement notice became operative at the end of the 21 days. By virtue of section 30(2) the dates of compliance with the improvement notice were no later than the 1 April 2019 for starting the works specified in the Notice and the 22 April 2019 for completing the works. On the 24 April 2019 the Council’s re-inspection of the property found that the specified works had not been commenced or completed.
47. Turning now to the requirements under schedule 13A. On 23 October 2019 the Council sent Kiran Gulati, at the companies address for service, the notice of intent to issue a financial penalty. Representations were made by Mr Gulati on 14 November 2019 concerning the sale of the Property on 30 September 2019. On 22 January 2019 the Council sent KC Inc Limited a final notice to issue a financial penalty. The Applicant did not challenge the validity of the notices.
48. The Tribunal considered whether service of the notice of intent on Mr Gulati personally amounted to a procedural defect that might invalidate the final notice. Taking account of section 251(a) and (b) of the 2004 Act, the Council could have pursued Mr Gulati personally, instead of or, in addition to, the company. If that was the Councils intention, the final notice, which relies on the notice of intent having been properly prepared and served, might have been invalid. However, Mr Khan’s statement does not indicate that the Council ever considered pursuing Mr Gulati personally. All other notices

were served on the company at its address for service. The evidence indicates that the local authority had not intended to pursue any person other than the Applicant company and the omission of the company name from the notice of intent, an error. Furthermore, Mr Gulati, as sole director and 100% shareholder of the Applicant company, acknowledges at page 2 of his statement that he received the notice of intent and that in response he spoke to the Council to make representations. It is not the Applicant's case that the Final Notice should be cancelled because the notice of intent was addressed to Mr Gulati rather than the Applicant company. As no objection was made to the notice and as it appears clear from the evidence that Mr Gulati was not adversely affected by the error in service of the Notice of Intent, the Tribunal finds that the procedural irregularity does not render the Final Notice invalid.

49. The Tribunal is therefore satisfied that the procedural requirements of section 30 and schedule 13A have been met.

HAS THE APPLICANT COMMITTED AN OFFENCE?

50. The Tribunal next considers whether the Applicant has committed the offence of failing to comply with the improvement notice dated 27 February 2019. The Tribunal reminds itself that it must be satisfied beyond reasonable doubt.
51. The Applicant does not appear to dispute that the works specified in the Notice had not started by the due date of no later than the 1 April 2019, had not been completed by 22 April 2019 and that this was continuing on 24 April 2019, being the date of Mr Khan's re-inspection of the Property. Although the Applicant's agent HH was asked to carry out some works, in November 2018, preparatory to offering the Property for sale (referred to in paragraph 39), apart from the gas certification, none of the works appear to have been those specified in Mr Khan's initial email of 21 November 2018 or detailed in Schedule 2 of the improvement notice.
52. The Tribunal is satisfied that the Applicant did not comply with the improvement notice within the meaning of section 30(2) of the 2004 Act and that its failure to comply continued beyond the date of the Council's inspection on the 24 April 2019.
53. The Applicant appears to contend that it had a reasonable excuse for its failure to comply with the improvement notice. The Applicant submits that Mr Worrall of HH was acting throughout as its agent, was responsible for all aspects of management and had been asked to inspect and carry out any required maintenance. The Applicant infers that the Tribunal should consider the actions of Mr Worrall when assessing its liability.
54. Before turning to the facts, the Tribunal considers it necessary to review the elements of the offence under section 30 of the 2004 Act. The offence is committed when the person on whom the improvement notice is served fails to start the remedial action in relation to each hazard by the date specified in the notice, and fails to complete the remedial action for each hazard by the date specified. The offence continues until the remedial action has been

completed for each hazard despite the fact the period for completion of the actions has expired.

55. It follows from the above analysis that the reasonable excuse must relate to the failure to address the remedial action specified for each hazard throughout the period of non-compliance.
56. In this case the Applicant's failure to comply with the improvement notice started on 1 April 2019 and continued to beyond the date of the Council's re-inspection on 24 April 2019.
57. The Applicant relies upon a series of e-mails with HH in November and December 2018 concerning certain works that the agents had been asked to carry out, ostensibly to facilitate a sale of the property. The emails do not confirm that HH was instructed to address the works specified in Mr Khan's email of 21 November 2018. Although certain works do appear to have been carried out during November and December 2018, the Tribunal does not find that any of the works were those set out in the Mr Khan's email of 21 November 2018 and later specified in Schedule 2 of the improvement notice.
58. The Tribunal does not accept Mr Gulati's explanation that HH were instructed to carry out works specified in Mr Khan's email of 21 November 2018. The emails that he relies on (referred to in paragraph 39) do not support that explanation.
59. The Tribunal finds that Mr Khan served the improvement notice on the Applicant on 27 February 2019. The notice included the Council's reasons for taking enforcement action and the rights of appeal. The Applicant did not appeal the improvement notices.
60. The Tribunal places weight on Mr Khan's statement that when he re-inspected the Property on 24 April 2019, the hazards identified in the notice all remained. Whatever the extent of Mr Gulati's belief that HH had been instructed to carry out the works, it should have been evident on receipt of the improvement notice, that the works remained outstanding. A responsible landlord would have made thorough enquiry of his agent about precisely what works had been carried out and what remained. The evidence (referred to in paragraph 43) suggests that Mr Gulati made no more than a cursory enquiry of HH on 4 March 2019 and was satisfied with the response that they were arranging a re-inspection with the Council to "view the improvements".
61. There is a dispute of fact as to the conversation that took place between the Applicant and Mr Khan on the 14 November 2019, in response to the notice of intent (ground (ii) of the appeal). The Tribunal does not consider that any comment that Mr Khan might have made in that conversation concerning the sale of the Property, to be relevant to whether an offence was committed by the Applicant, or whether the procedural requirements of s13A of the 2004 Act have been complied with.
62. The Tribunal finds that the Applicant did not comply with the requirements under the improvement notice to start and complete the specified works by the due dates, and its failure continued beyond the date of the re-inspection on 24 April 2019. The Tribunal finds that the Applicant did not have a reasonable excuse for its failure to comply and is satisfied, beyond reasonable doubt, that the Applicant had committed the offence of failing to comply with the improvement notice dated 27 February 2019.

ASSESSMENT OF PENALTY

63. Mr Khan explains in his statement the steps that he followed in arriving at his decision to impose a financial penalty on the Applicant. Mr Khan had regard to the West Midlands Civil Penalty Matrix. [AK16] The matrix provides an indicative minimum tariff under the various offence categories, with the final penalty adjusted to take account of any aggravating and/or mitigating factors. The Council views failure to comply with an improvement notice as a significant issue exposing the tenants to one or more significant hazards. A civil penalty of £5000.00 was therefore determined to be appropriate for a first offence of failing to comply with an improvement notice. No additional premiums were added.
64. Under paragraph 10 of schedule 14, the Appeal to the Tribunal is by way of a rehearing of the Council's decision and the Tribunal may have regard to matters of which the Council was unaware. On Appeal the Tribunal may confirm, vary or cancel the final notice. The Tribunal makes its findings of fact on the factors identified at 3.5 of the Guidance and having due regard to the Councils matrix.
65. The Tribunal finds as follows:

Severity of the Offence

66. The Applicant did not appeal the improvement notice which means that the Tribunal is entitled to treat Mr Khan's assessment of the Category 1 and Category 2 hazards at the Property as final and conclusive. In so doing the Tribunal accepts Mr Khan's evaluation that the deficiencies in the property were not sufficiently serious to apply a premium.

Culpability and Track Record

67. The Tribunal's findings in respect of the Applicant's defence of reasonable excuse are relevant to the question of culpability. The Tribunal found that the Applicant had opportunities to address its obligations under the improvement notice but failed to adequately monitor the work of its agent or take responsibility for the agent's failure to act. In doing so the Tribunal accepts Mr Khan's evaluation that although culpable, the Applicant did not act in a reckless or deliberate manner that would signify the addition of a premium.
68. The Tribunal is satisfied that the Applicant had no previous convictions, and that this was the first time that the Council had dealt with the Applicant under the 2004 Act.

The Harm Caused to the Tenant

69. The Tribunal is satisfied with Mr Khan's evaluation that there were no vulnerable occupants or significant harm caused by the housing conditions.

Punishment of the Offender

70. This factor is directed at ensuring the penalty is set at a high enough level to ensure that it has real economic impact upon the Applicant and demonstrate the consequences of not complying with its responsibilities. The Tribunal considers that this factor brings into play the Applicant's financial circumstances. The Tribunal accepts however that the Applicant has not provided details of its income and there are no mitigating factors before the Tribunal that might reduce the penalty.

Deter the Offender and others

71. The Tribunal considers the question of deterrence overlaps with the factor of punishment, in that it is designed to ensure that the level of the penalty is at a high enough level such that it is likely to deter the offender from repeating the offence and deter others from committing the offence. The Tribunal considers that the factor of deterrence did not require specific attention in this case provided the Applicant received a financial penalty for its offence, which should in itself, act as a deterrent.

Remove any Financial benefit the Applicant may receive

72. Mr Khan made no assessment of financial benefit. The Tribunal finds that the Applicant received no pecuniary advantage from its offending.

EVALUATION OF FINANCIAL PENALTY

73. The final act of the Tribunal is to stand back and decide whether an amount of £5,000.00 is just and proportionate to the offence. The Tribunal decides that an amount of £5,000 is an appropriate financial penalty for the Offence to be paid within 28 days.

Tribunal Judge D. Barlow – Chair

Date: 2 June 2020

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).