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

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| **Case reference** | | **CAM/34UF/HNA/2021/0001** |
| | **:** | **CAM/34UF/HNA/2021/0002** |
| **HMCTS Code** | | **V: CVP REMOTE** |
| **Properties** | **:** | **328 London Road, Northampton, NN4 8BD**<br>**15 Haselrig Square, Northampton NN4 9RD** |
| **Applicant** | **:** | **Pamela Joyce** |
| **Respondent** | **:** | **Northampton Borough Council** |
| **Representative** | **:** | **Northampton Legal Services** |
| **Type of application** | **:** | **Appeal against financial penalties: section 249A Housing Act 2004** |
| **Tribunal member(s)** | **:** | **Judge Wayte**<br>**Tribunal Member Moll** |
| **Date of hearing** | **:** | **18 May 2021** |
| **Date of decision** | **:** | **1 June 2021** |

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**DECISION**

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**Covid-19 pandemic: description of hearing**

This has been a remote video hearing which has been consented to by the parties. The form of remote hearing was V: CVP REMOTE. A face-to-face hearing was not held due to the pandemic. The tribunal was referred to a hearing bundle prepared by each party. References to the page numbers in the bundles are contained in square brackets, with the applicant's bundle identified by the letter A.

**The order made is:**

**(1) The tribunal cancels the eight final penalty notices dated 18 December 2020.**

**(2) The respondent is ordered to reimburse Ms Joyce the tribunal fees of £1,000 within 14 days of this decision.**

## The application

1. The respondent served the applicant with eight Final Notices to Issue a Financial Penalty, four for each property, by first class post on 18 December 2020. The notices stated that the applicant had committed offences under sections 72 (HMO licensing) and 234 (Management Regulations in respect of HMOs) of the Housing Act 2004 ("the 2004 Act") in respect of both properties and imposed financial penalties amounting to a total of £12,000.

2. The applicant appealed those penalties by making an application to the tribunal on 7 January 2021. The grounds of appeal in the application were that the council had failed to fully take account of or to give sufficient weight to the arguments and representations put forward in the applicant's supporting statement (sent with her representations), or the issue of due diligence exercised by the applicant.

3. Directions were given on 22 January 2021. Both parties filed their hearing bundles in accordance with the directions and the matter was listed for hearing on 18 May 2021.

4. The appeal was heard by video conference. The applicant was represented by counsel Adam Pearson and appeared as a witness on her own behalf. The council was represented by counsel Ms Poonam Pattni and relied on a number of witnesses: Arthur Chikonde, Rekha Patel, Christopher Bates and Samantha Ling. The witnesses had all been part of the housing enforcement team at the relevant time, although Mr Bates had left the council's employment by the time of the hearing.

## Background

5. The applicant bought both properties on buy to let mortgages as part of her pension provision. It transpired that at the time of the offence she had a total of 6 rental properties but the tribunal is only concerned with 328 London Road and 15 Haselrig Square, both in Northampton. 328 London Road is a semi-detached inter-War 3 bedroom two-storey house, with two reception rooms on the ground floor. 15 Haselrig Square is a smaller, more modern end of terrace property but again with three bedrooms and on two storeys, with a similar layout to London Road.

6. The applicant's bundle included a copy of several tenancy agreements for each property. 328 London Road was the first property she bought as part of her portfolio and in April 2015 she let it to Constantin and Adriana Dinca, a brother and sister, together with Macelaris (Macel) Grecu, Adriana's partner. Constantin Dinca subsequently married Theodora Oana Dinca (known to the applicant as Oana) and they had a child, Kevin. Adriana and Macel moved to 15 Haselrig Square in 2016 but Constantin, his wife and child remained in occupation of 328 London Road until they left the property in March 2021. The rent was £850 per calendar month throughout this period, paid by bank transfer until around August 2019 when Constantin Dinca said he had got into financial difficulties and started to pay the rent in cash.

7. Adriana Dinca and her partner Macel moved into 15 Haselrig Square in September 2016. They were subsequently joined by Adriana's mother Floarea, with the consent of the applicant. The monthly rent of £695 remained the same throughout their period of occupation and was paid by bank transfer by Adriana Dinca until the family vacated the property sometime last year, prior to its sale by the applicant.

8. Both properties were let unfurnished and the rent was net of bills and council tax. The tenancy agreement for 328 London Road dated 4 April 2015 stated that the tenant was responsible for internal repairs and prohibited subletting, including the taking in of any lodger or paying guest [169/A]. The original agreement for 15 Haselrig Square was in identical terms [151/A].

9. On 13 January 2020 the respondent obtained warrants to enter each property from Northampton Magistrates Court. The Information for the warrants was not included in the respondent's bundle. Both warrants were executed on 12 February 2020, with the council entering 328 London Road first at around 9.30am.

10. Constantin Dinca let the council into the property. Oana and her son were both in the ground floor front reception room, which the family were using as a bedroom. Upstairs, the council found a Mr Ion Carp occupying one of the bedrooms on the first floor. The council also found documents and possessions of a Mr Igor Ghenita in another bedroom, although he was not present. The third bedroom was furnished but vacant.

11. The council interviewed all three occupants. Constantin Dinca stated that he moved into the property in 2017 and paid rent of £850 pcm by cash/transfer. He identified the applicant as the owner and provided her telephone number. When asked how often she visited the property the answer recorded was "*No regular time, as and when*" [119-121]. He denied he was related to anyone else in the property and identified "Imsun" and Ion upstairs as friends, with a total of 4 people in occupation. Oona Dinca was interviewed separately using a language

line interpreter. She maintained that she was "maybe" a second cousin of Constantin, that she was only visiting the property and she was not a tenant. She claimed to be occupying the vacant room on the first floor since before Christmas. She said she gave what she could to help pay the rent. She was able to confirm that the applicant was the landlord and she claimed Ms Joyce visited the property almost every week, including the evening before the inspection. She said the applicant collects rent from Constantin in cash, if it is not paid by bank transfer. She identified 4 occupants, 6 including herself and her son but reiterated that she did not live at the property [122-124]. Finally, the council interviewed Ion Carp. He said he had moved in on 15 November 2019, identified his landlord as Constantin and said he paid £400 cash per month to him. Bills were included. He shared his room with his wife, Aison. There were a total of 6 people living at the property, including the child. He said that other people come and go and that he had seen up to 8 people who stay for a week [81-83].

12. The council concluded that the property was being occupied as an HMO by 6 people from three households. Looking around the property, 17 breaches of the Houses in Multiple Occupation (England) Regulations 2006 (HMO Regulations) were identified. The most serious breach related to fire safety, due to the lack of working smoke alarms and other fire safety measures.

13. The council then moved on to 15 Haselrig Square. Access was gained through the unlocked front door but no one was there. All three bedroom doors were locked and the council's locksmith opened the doors to facilitate the inspection. The council found documents and possessions for 5 people: Adriana Dinca and Macelaru Grecu on the ground floor and Sergiu Vetrila, Evgheni Cretu and Maria-Madalina Dobrila in the upstairs bedrooms.

14. They again concluded the property was being occupied as an HMO by 5 people from 4 households. They found 16 breaches of the HMO Regulations, with the most serious breach again relating to fire safety due to defective detectors.

15. Due to the concerns about fire safety at both properties, the council contacted the applicant and asked her to install fire alarm detectors at both properties. The applicant arranged for that to be done the same day. Improvement notices were also issued for both properties but were subsequently revoked by the council.

16. On 17 February 2020 the council requested information from the applicant under section 16 of the Local Government (Miscellaneous Provisions) Act 1976. Confusingly, the forms stated the address of the property as 70 Kingsley Road but the applicant replied in respect of both addresses. She gave her full address and contact details and confirmed that she was the owner of both properties with buy to let

mortgages to contribute to her pension. She described both properties as a family house.

17. On 10 March 2020 James Duggan of Eagles Estates wrote to the council to confirm that he was taking over the management of the applicant's portfolio. He told the council that the tenants had admitted fitting locks to the doors at 15 Haselrig Square but they have now been removed. They also maintained that the occupants were related and therefore he doubted the property was being occupied as an HMO. He confirmed that the lodger had left 328 London Road and that the applicant had asked him to ensure the houses were both compliant. He proposed mediation to ensure that the cases were closed for the benefit of the council and the landlord.

18. On 16 March 2020 the applicant attended the Council Offices for an interview under caution, without legal representation. She was interviewed by Arthur Chikonde and Christopher Bates and gave a full account of her lettings to the Dincas and their family [439-496]. She said that she visited the properties "*Maybe only once every six months*", with the last visit on 5 November 2019. She denied that either property was run as an HMO, both were family homes. She did not know any of the other occupants and had not taken any rent from them. She confirmed that Eagle Estates had taken over the management of her properties.

19. On 27 March 2020 the applicant emailed Arthur Chikonde to confirm she wanted to appeal the council's finding that both properties were HMOs. Since the council's inspection she had discovered that Maria Dobrila was Adriana's cousin and had been house sitting for Adriana and Macel while they were in Romania for hospital treatment. She reiterated that "*I've repeatedly stated to you that to my knowledge neither of the properties in question have never been used as an HMO property*".

20. On 10 August 2020 Arthur Chikonde issued four Notices of Intent to impose financial penalties on the applicant in respect of each property. The letter serving the notices confirmed that the council was satisfied beyond reasonable doubt that the applicant's conduct amounted to relevant housing offences. The penalties were for the failure to licence an HMO and for various breaches of the HMO Regulations, amounting to a total of £12,000. The letter confirmed that the applicant had the right to make representations within 28 days.

21. On 8 September 2020 Bains Solicitors sent the applicant's representations to the council. The applicant selected all the defences in the proforma response, including that she had a reasonable excuse for the alleged offence. She included a supporting statement which confirmed the information given in her interview, save for the fact that her inspections were annual, with the most recent inspection for both

properties taking place on 5 November 2019. There was also a statement from Eagle Estates confirming their view that the tenants had breached the terms of their agreement by subletting.

22. Samantha Ling, the Housing Enforcement Manager, responded to the representations on 14 December 2020. She relied on the evidence from the council's inspection that both properties were clearly identifiable as HMOs, stated that "*It is the landlord's responsibility to ensure that their properties are legally compliant and ignorance is not a defence*" and reiterated that the council were able to prove beyond all reasonable doubt that the properties were operating as an HMO. She was satisfied that the penalties had been calculated correctly and in line with the council's Civil Penalty Policy.

23. The Final Notices were served on 18 December 2020.

**The Law**

24. Financial penalties as an alternative to prosecution were introduced by the Housing and Planning Act 2016 which amended the Housing Act 2004 by inserting a new section 249A and schedule 13A. It is for the local authority to decide whether to prosecute or impose a fine and guidance has been given by the Ministry of Housing, Communities and Local Government. In order to impose a financial penalty the local authority must be satisfied beyond reasonable doubt that the conduct amounts to a relevant housing offence.

25. Section 249A lists the relevant housing offences which include offences under section 72 (licensing of HMOs) and section 234 (management regulations in respect of HMOs) of the 2004 Act. Section 72(1) is the offence of being in control of or managing an unlicensed HMO, which is a strict liability offence subject to the "reasonable excuse" defence in section 72(5), which is for the accused to establish on a balance of probabilities. That defence is also available for breaches of the management regulations under section 234(4). Section 263(1) describes a person having control as someone who receives the rack-rent of the premises whether on his own account or as an agent or trustee of another person.

26. Schedule 13A sets out the requirement for a notice of intent to be given before the end of 6 months beginning with the first day on which the authority has sufficient evidence of the conduct to which the financial penalty relates. It also contains provisions in respect of the right to make representations within 28 days after that initial notice and the requirements for the final notice.

27. Appeals are dealt with in paragraph 10 of Schedule 13A. The appeal is a re-hearing and may be determined having regard to matters of which

the authority was unaware. On an appeal the First-tier Tribunal may confirm, vary or cancel the final notice.

28. The maximum civil penalty is £30,000. The relevant factors as set out in the MHCLG guidance are:

(a) Severity of the offence;
(b) Culpability and track record of the offender;
(c) The harm caused to the tenant
(d) Punishment of the offence

(e) Deter the offender from repeating the offence

(f) Deter others from committing similar offences.

(g) Remove any financial benefit the offender may have obtained as a result of committing the offence.

**The issues**

29. The applicant's bundle included an expanded statement of reasons for appeal [213-215/A]. They confirmed that the applicant did not dispute that the properties were each being occupied by members of more than one household as at the date of the council's inspection. The applicant's case was that she had a reasonable excuse defence for all of the offences alleged by the council. If the tribunal did not consider that she could establish that defence, the secondary argument was that the penalties were excessive.

**Did the applicant have a reasonable excuse?**

30. As stated above, it is for the applicant to prove her defence on a balance of probabilities but since the council presented their case first, it makes sense to consider their case against the defence.

31. The council's Statement of Case in response to the Grounds of Appeal in the application stated at paragraph 15 "*The Council believes that the evidence shows that the applicant was aware of the number of unrelated tenants at her properties and collected rent from them on a weekly basis as testified by some of the tenants*". At paragraph 17 they stated they did not see the relevance of the due diligence exercised by the applicant, alternatively the applicant failed to exercise sufficient due diligence to ensure that the properties were rented out in accordance with the law [1-7].

32. Arthur Chikonde, the officer in charge of the investigation, provided two witness statements. The first, dated 22 February 2021, dealt at length with the inspections on 12 February 2020 but also mentioned the interview and the applicant's emails referred to in paragraph 19 above. He summarised the defence as the applicant stating that "*the tenants acted within their own means*" [8-58]. The second statement

dated 1 March 2021 was apparently intended to explain the basis on which the council had decided to proceed with the civil penalties. However, other than a statement that he considered there was enough evidence to prove the offences beyond reasonable doubt, there was nothing in the council's bundle explaining why the council had apparently disregarded the defence raised by the applicant during her interview and subsequently [503-5] or the basis for the claim set out in paragraph 31 above.

33. In his cross-examination by Mr Pearson, Mr Chikonde relied on the statement from Oana Dinca that the applicant had been at the property the day before the inspection to collect the rent in cash and the obvious evidence of multiple occupation at 328 London Road. Mr Chikonde was very reluctant to agree that Oana's statement contained lies but eventually accepted that she was married to Constantin Dinca and shared a room with him. He pointed to the handwritten notices in Romanian in the kitchen and fridges in the various bedrooms as obvious evidence of multiple occupation.

34. The tribunal asked Mr Chikonde what evidence he had taken into account other than the inspection in coming to the conclusion that the council could prove their case beyond reasonable doubt. Mr Chikonde reiterated that the applicant had collected rent from the property and based on his inspection anyone would have identified that the property was occupied as an HMO. He accepted that the applicant had denied knowledge in her interview under caution and provided him with copies of the tenancy agreements in response to a request by the council.

35. In terms of Haselrig Square, Mr Chikonde stated that neighbours had complained about overcrowding. He also pointed to the locks on the doors which again were symptomatic of a property used as an HMO. Photographs were provided of various doors which appeared to show a mix of old locks and new, although Mr Chikonde stated that in his opinion the locks had been there for some time.

36. The next witness was Rehka Patel who had completed the Occupation Questionnaire on Oana's behalf. Her witness statement stated that Constantin Dinca has wanted to answer questions for Oana, however she decided to use a language line interpreter to speak to her directly. Ms Patel confirmed that she had seen Oana Dinca come out of the ground floor bedroom wearing a dressing gown. In cross-examination, Ms Patel stated that she knew Oana's answers did not match what she had seen and that Oana went to the ground floor room to obtain evidence of identification rather than the room she claimed to occupy with her son. In her experience, people answered the questionnaires in a way they thought would be useful. She accepted that Oana had said she was not willing to provide any further statements or attend court as a witness.

37. Christopher Bates followed Ms Patel. He confirmed to Mr Pearson that he thought the applicant was perfectly genuine in her responses to his questions in the interview under caution. When taken to the transcript at [451] where he said "*You genuinely do look shocked to me, which is fine*", he said he couldn't remember whether the applicant looked shocked now but he wouldn't have said that unless he thought so at the time. He confirmed that he did not take any part in the decision to issue the penalties as his contract came to an end on 20 March 2020.

38. Finally, Samantha Ling gave evidence for the council. She said that she had reviewed the investigation and authorised the enforcement action. When asked whether she had considered the transcript of the interview under caution, Ms Ling responded that she looked at the information the applicant provided and thought it contradicted a lot of the information the council had obtained. She felt the evidence on inspection outweighed the applicant's representations. She found it hard to believe that the applicant would not have known about the properties' use as HMOs whether she put the tenants in there or not. She considered that cash payments on the applicant's bank statement supported the occupation questionnaires and confirmed her reliance on the statement by Oana that the applicant had visited the property the day before the inspection. She repeated her view that ignorance is not a defence.

39. In cross-examination, Ms Ling accepted that some of Oana's statements were untrue but stated that her questionnaire did not have a significant amount of weight in her decision-making process. She had not been aware that the tenants of both properties were related. In terms of the process for approving enforcement, she confirmed that there would have been an "infringement report" by Mr Chikonde but a copy was not in the bundle.

40. In closing for the council, Ms Pattni relied primarily on her submission that a visit once a year is not in keeping with the defence of reasonable excuse. There was no evidence of proper management by the applicant and she queried whether it was credible that both properties suddenly became unlicensed HMOs after the last visit by the applicant on 5 November 2019. She suggested that the tribunal should find against the applicant as the facts were similar to the case of *IR Management Services v Salford City Council* [2020] UKUT 81 (LC).

41. Ms Joyce then gave evidence on her own behalf. She confirmed that she always gave notice before visiting the properties and that after the first contract the frequency of her visits reduced to when a new agreement was signed, once a year. Both properties were in good condition and she saw nothing to doubt that they were being occupied as family homes. She had never taken cash at the property but thought Constantin's rent had been paid by relatives after he got into difficulties

towards the end of 2019. She had told the truth at her interview under caution.

42. In cross examination the applicant stated that she went into every room when she inspected the properties and hadn't noticed anything indicating multiple occupancy. Nothing appeared untoward.

43. In closing, Mr Pearson submitted that the applicant's defence was made out if the tribunal considers on a balance of probabilities that she genuinely did not know that the properties were being occupied as HMOs, absent wilful blindness. Given that the tenants had lived in both properties for 4/5 years, paid their rent and looked after the properties, there was no reason for the applicant to carry out more frequent visits. If the council are saying that the applicant did know the properties were being occupied as HMOs that required a finding that the applicant was lying, despite her consistent evidence throughout. The only clear evidence of lies was in Oana's statement to the council. As to how the properties were presented, the council only had evidence from their inspection in February 2020, not what the applicant saw on 5 November 2019. When the evidence is considered as a whole, the consistent statements by the applicant, the tenancy agreements and her bank statements demonstrate a truthful and honest witness who was taken advantage of by her tenants. In the circumstances the defence was made out and the appeal should be allowed.

## The tribunal's decision

44. The tribunal agrees with Mr Pearson that the applicant is a truthful and honest witness. The contrast between her evidence and the statement by Oana Dinca is stark and it is extremely troubling that the council seized on Oana's statement that the applicant had been to the property the day before the inspection to collect rent as one of the main justifications for their enforcement action. Given the obvious lies told by Oana the tribunal considers that her statement should have been disregarded in its entirety. If the applicant had really been to the property the day before, Constantin Dinca would surely have said so. Of the three interviewees, Ion Carp was the most obvious to be telling the truth but that was clearly inconvenient for the council as his evidence supported the applicant's case. No attempt appears to have been made by the council to interview the tenants of 15 Haselrig Square or indeed to make further enquiries of the occupants at either property.

45. As to the evidence on inspection, that clearly does not contradict the applicant's evidence that she saw nothing untoward on 5 November 2019. Even on the council's evidence, Mr Carp only moved in after that date and there is no evidence about when the additional occupants moved into 15 Haselrig Square. While the tribunal agrees with Ms Pattni that an annual inspection is somewhat lax, it was only just over 3 months before the council's visit and therefore that alone is insufficient

to remove the defence. That said, the applicant is wise to seek the assistance of professional letting agents going forward.

46. The tribunal does not agree that the facts of this case are on all fours with *I R Management v Salford*. In that case the appellant was an experienced letting agent, he claimed to have visited the property shortly before the council's inspection and evidence from an occupant and neighbours indicated that the property had been used as an HMO for several months. It had also been relatively recently let to a single individual. By way of contrast, the applicant may have owned and let out several properties but her approach was miles away from that of an experienced letting agent. Both properties were let to couples for over 5 years at the same rent. The council produced no evidence to support their claims that the properties had been let as HMOs other than what they found on their inspection on 12 February 2020. As stated above, the most impartial occupant's evidence supported the applicant's case. Contrary to Ms Ling's view, it is clear that ignorance that a property is being used as an HMO can be a defence (paragraph 26 *Thurrock Council v Daoudi* [2020] UKUT 209).

47. In the circumstances, the tribunal finds that the applicant has proven she has a reasonable excuse for all the offences as set out in section 72(5) and section 234(4) of the 2004 Act. No offences have therefore been committed and the financial penalties must be cancelled.

**The penalties**

48. Although there is no need to consider the issues further from the point of view of the applicant's liability, the tribunal considers that the council made a number of errors when calculating the penalties which should be considered in future cases.

49. Northampton applied their 2020 enforcement policy which includes a matrix producing points to calculate the appropriate penalty. Mr Chikonde in the tribunal's view applied that matrix incorrectly, in particular in relation to his assessments of culpability and financial benefit. Ms Ling conceded in evidence that he had also failed to complete the mitigation section properly.

50. Mr Chikonde accepted that the applicant had committed no previous offences and was extremely co-operative in the investigation. However, his score for culpability was 15 which is described in the matrix as: "*Multiple offender. Some premeditation. The offence has been going on for a significant period of time. A case history of non-cooperation and relevant prior offending including a repeat of this offence*." His justification stated: "*Ms Pamela Joyce has a number of properties that she owns. Therefore, as a landlord with a small portfolio, she should have knowledge of the relevant housing legislation, including HMO licensing requirements*." Although the policy states elsewhere that

landlords with large property portfolios will be considered more culpable, that is to be reflected by a double weighting rather than in the initial assessment. On the evidence in this case, the tribunal considers that the score should have been 1 "*Short term offence, no premeditation and no previous history*" or 5 (argued by Mr Pearson) "*First time offence. The offence has been ongoing for a short time. Minor prior infractions which may include a repeat of the current offence.*"

51. Ms Ling had sought to argue that as the council had found a number of offences when they inspected both properties "*multiple offender*" was the correct label. The tribunal rejects this approach. As Mr Pearson pointed out, if a number of offences are found each may be the subject of a civil penalty. Using that number to increase the culpability score for each penalty breaches the principles of fairness and proportionality. It also ignores the other factors, such as co-operation.

52. Financial benefit was the other score which the tribunal singled out as clearly wrong in approach. Mr Chikonde had given the applicant a score of 20, described in the matrix as "*Maximum financial impact available*". His justification was "*Ms Joyce owns a small portfolio of properties. She has owned this property since 2016 and have rented this property out since then. The owner has benefitted significantly with the property being occupied as HMO*". The fact that Ms Joyce owns a portfolio is irrelevant to this factor. The evidence showed that she had kept the rent at the same level as the original letting. There was no evidence of any benefit to the applicant from either property being used as an HMO. In the tribunal's view the correct score should have been 1 "*Negligible financial impact*".

53. Ms Ling's subsequent verbal justification that the applicant had "saved money" by not paying for an HMO licence and necessary works to abide by the management regulations also fails to provide sufficient justification for the top score. The tribunal is dubious that this is the sort of financial benefit contemplated (as opposed to the rental income) but even if it is relevant to the score, it would probably only justify 5 or 10, low to moderate or medium financial impact.

**The applicant's fees**

54. As stated above, the tribunal considers that Oana Dinca's evidence was so obviously unreliable that it should have been discounted by the council at the outset. No other evidence was produced to support the claim by the council that "*…the evidence shows that the applicant was aware of the number of unrelated tenants at her properties and collected rent from them on a weekly basis as testified by some of the tenants"*. The only evidence that the applicant had attended the property "*almost every week*" came from Oana Dinca, who did not confirm that rent was collected weekly. In any event that statement

was only in respect of 328 London Road. In the light of the full explanation given by the applicant at her interview and the supporting information provided, the tribunal does not consider that the council could reasonably have come to a decision that it could prove its case beyond reasonable doubt. That conclusion could only have been reached by disregarding the defence in its entirety. It follows that the council should have accepted the offer of James Duggan from Eagle Estates to mediate the dispute at an early stage.

55. The council also passed up a second opportunity to mediate the case. In the directions, both parties were ordered to communicate with each other to see whether the dispute could be settled or at least narrow the issues. The applicant's solicitors wrote to the tribunal on 31 March 2021 to confirm that they had made various attempts to contact the council and although emails had been sent to both Mr Chikonde and the Northampton legal team, no response was received. The directions should be obeyed and the tribunal is disappointed that a public body would behave in this way.

56. As a result of the failure of Northampton to properly consider her defence both before and after the issue of her appeal and its failure to enter into discussions with the applicant as ordered by the tribunal, the applicant has been put to considerable expense. While the tribunal is generally a "no costs" jurisdiction, Rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 provides the tribunal with discretion to make an order requiring a party to reimburse any other party the whole or part of the tribunal fees. In the circumstances of this case, the tribunal considers it is just and equitable to order the respondent to reimburse the applicant's fees of £1,000 within 14 days. This is likely to be a small fraction of the total costs incurred but reflects the outcome of the proceedings in the applicant's favour.

**Name:** Judge Ruth Wayte **Date:** 1 June 2021

## 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).