**First-tier Tribunal**
**Property Chamber**

**(Residential Property)**

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| **Case References** | **:** | **MAN/00CH/HNA/2020/0037V**<br>**MAN/00CH/HNA/2021/0018V** |
| **Properties** | **:** | **58 Eastbourne Avenue, Gateshead, NE8 4NH**<br>**176 Westbourne Avenue, Gateshead, NE8 4NQ** |
| **Appellant** | **:** | **Mr Zorik Adamian** |
| **Respondent** | **:** | **The Borough Council of Gateshead** |
| **Type of Application** | **:** | **under paragraph 10 of Schedule 13A to the Housing Act 2004 – appeals against financial penalties under s.249A of the 2004 Act** |
| **Tribunal Members** | **:** | **Judge P Forster**<br>**Mr I D Jefferson FRICS** |
| **Date of Decision** | **:** | **23 August 2021** |
| **Date of Determination** | **:** | **21 September 2021** |

**DECISION**

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Decision

(1) The Tribunal is satisfied beyond reasonable doubt that the Appellant committed an offence under s.95(1) of the Housing Act 2004 in respect of 58 Eastbourne Avenue, Gateshead, NE8 4NH for which he is liable to pay a financial penalty of £4,983.34 under s.249A of the Act. The appeal is not allowed. (MAN/00CH/HNA/2020/0037V**)**

(2) The Tribunal is satisfied beyond reasonable doubt that the Appellant committed an offence under s.95(1) of the Housing Act 2004 in respect of 176 Westbourne Avenue, Gateshead, NE8 4NQ for he is liable to pay a financial penalty of £4,983.34 under s.249A of the Act. (MAN/00CH/HNA/2021/0018V)

Introduction

1. There are two appeals made under paragraph 10 of Schedule 13A to the Housing Act 2004 ("the Act") against financial penalties imposed under s.249A, in respect of (1) 58 Eastbourne Avenue, Gateshead, NE8 4NH ("58 Eastbourne Avenue") and (2)176 Westbourne Avenue, Gateshead, NE8 4NQ ("176 Westbourne Avenue"). The Appellant is Zorik Adamian (also known as Zorik Hatami) who at the relevant time owned and managed the properties. The Respondent is The Borough Council of Gateshead which is the relevant local housing authority.

2. On 19 December 2019, the Respondent issued the Appellant with two notices of intent to impose a financial penalty, in respect of 58 Eastbourne Avenue and 176 Westbourne Avenue. In each case the penalty was £9,988.89. This was followed by two final notices dated 22 May 2020 that confirmed the amount of the penalties. The total amount of the penalties was £19,977.78.

3. The first appeal concerns 58 Eastbourne Avenue (MAN/00CH/HNA/2020/0037V) and the second appeal is about 176 Westbourne Avenue (MAN/00CH/HNA/2021/0018V).

4. The Tribunal issued Directions on 12 April 2021 that provided for the Respondent to address the issues raised by the appeals and to provide bundles of relevant documents for use at the hearing. The Appellant was also required to provide bundles of relevant documents, to include an expanded statement of the reasons for the appeals.

5. The appeals were held by video on 18 August 2021. The Appellant represented himself and the Respondent was represented by Mr Currie, a solicitor from the Council's legal department. The Tribunal heard evidence from the Appellant and from Rachel Crosby and Julie Wilkie on behalf of the Respondent.

The Appellant's case

6. The Appellant responded to the notices of intent and made written representations to the Respondent. His case was stated succinctly in the notice of appeal. He did not provide expanded reasons in his bundle of documents but he made submissions at the hearing. The notice of appeal states:

    - "the decision to impose the penalty: the landlord has taken all the steps requested by the Council (documentation, landlord licensing fees, late payment fees, property repairs, both properties have been passed to a reputable, local property management company), and

    - the amount of the penalty: it is stated that the discounted rate amounts to 21% of the total claimed; however, that is misleading and amounting to 14% at best, there are flaws from the Council's part (i.e., seven months to come back to the landlord to let him know that his application hadn't been properly filled in. The Council held on to the application for over 6 months to come back. Licensing could not be that serious as far as the Council has dealt with the application and charging the landlord penalty whilst holding the application).

The Respondent's case

7. Both 58 Eastbourne Avenue and 176 Westbourne Avenue are in an area designated by the Respondent as a selective licencing area under s.80(1) of the Housing Act 2004. The scheme commenced on 30 October 2018. Both properties required a licence under s.85(1) but were not licenced. The Appellant, as a person having control of or managing a house which was unlicenced, committed offences under s.95(1). The Respondent has imposed financial penalties on the Appellant under s.249A as an alternative to criminal prosecution. The penalties have been calculated in accordance with statutory guidance and the Council's own Civil Penalties Enforcement Guidance.

The Law

Commission of Relevant Offences

8. All references are to the Housing act 2004.

9. A 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 (s.249A(1)).

10. An appeal against the imposition of a financial penalty is to be a re-hearing of the local authority's decision (para 10(3) to Schedule 13A). The Tribunal must therefore similarly be satisfied, beyond reasonable doubt, that such an offence has been committed.

11. Local authorities are empowered to designate areas within their district as a selective licencing area under s.81(1). A *"relevant housing offence"* includes an offence under s.95. A person commits an offence under s.95(1) if he is a person having control of or managing a house which is required to be licenced, but is not so licenced, under the selective licencing scheme. Local authorities are empowered to designate areas within their district as a selective licencing area under s.81(1).

12. Statutory defences are set out in s.95(3) and (4) where notification has been duly given under s.62(1) and s.86(1) or an application for a licence has been duly made under s.87 or where a defendant had a reasonable excuse for having control or managing the premises without a licence.

Amount of Penalties

13. A person who commits a relevant offence is liable on summary conviction to an unlimited fine (s.95(5)). Under s.249A, a local authority may impose a civil penalty instead of bringing a prosecution. The penalty cannot exceed £30,000 (s.249A(4)). Under the Rent Repayment Orders and Financial Penalties (Amounts Recovered) (England) Regulations 2017, it is clear that the purpose of imposing such penalties is to allow the local authority to meet the costs and expenses incurred in, or associated with, carrying out any of its enforcement functions in relation to the private rented sector (reg.4(1)).

Guidance

14. The Secretary of State published guidance in 2016 (Civil Penalties under the Housing and Planning Act 2016: Guidance for Local Housing Authorities), which was re-issued in 2018 and is relevant to offences under section 95(1) of the 2004 Act. Pursuant to Schedule 13A, a local housing authority is to have regard to any guidance given by the Secretary of State about financial penalties.

Reasons for the Decision

15. 58 Eastbourne Avenue and 176 Westbourne Avenue are both ground floor pre-1919 Tyneside flats with two bedrooms. They are owned by the Appellant. At the date the selective licencing scheme commenced, 30 October 2018, both properties were let to a tenant.

16. The Appellant owns 4 properties in the Gateshead area, one of which is in Chopwell, an area that was previously subject to a selective licensing scheme. The Appellant has been a landlord for more than 10 years and is a member of the Gateshead Private Landlords Association. On 1 November 2017, the Appellant met Carol Atkin, a Senior Support Assistant in the Council's Private Sector Housing Team, to discuss a problem he was having with 56 Eastbourne Avenue. Ms Atkin informed the Appellant that both 56 Eastbourne Avenue and 176 Westbourne Avenue were in the proposed "Avenues" selective licensing scheme. He gave her his address, 39 Cromwell Road, Harrow, to be included in the Council's Selective Landlord Licence records.

17. Following the approval of the licensing scheme, the Respondent undertook a publicity campaign to raise awareness of the scheme in the area. The Respondent sent a letter to the Appellant on 2 February 2018 advising him of the start date of the scheme. A second letter was sent to him on 2 August 2018 reminding him of the need to apply for a licence. A month after the scheme commenced, on 30 November 2018, the Appellant was sent a warning letter informing him that an offence was being committed. A final reminder letter was sent to the Appellant on 9 January 2019. This is set out in statements made by the Respondent's witnesses with the relevant documents exhibited. The Appellant does not dispute that the letters were sent but says that he did not receive them because he was not always at the address in Harrow.

18. Ms Crosby gave evidence about her previous dealings with the Appellant in respect of his property in Chopwell. In December 2009, April 2010 and June 2010, the Council sent reminder and warning letters to the Appellant because the Chopwell house was not licenced. No application was made for a licence and the matter was considered for prosecution. The Appellant was asked to go to a PACE interview but he did not attend. In April 2011, an application was made for a licence by Romona Babakhanians, who is the Appellant's wife. She had taken on responsibility for managing the property. The application that was submitted was deficient and it was not until August 2011 that all the required information was provided. The application was not duly made until 19 months after the scheme had started. History has repeated itself in the present cases. The Appellant sought to distance himself from the Chopwell property saying that his wife had taken control of the house. That does not absolve him from responsibility because he owned the property and on Ms Crosby's evidence he was in contact with the Council and knew about the licencing scheme. The Appellant learned nothing from what happened in 2011. No legal action was taken against the Appellant because licencing schemes were new and the Council took a more tolerant approach to breaches.

19. The Appellant spoke to Claire Cole, in the Council's Private Sector Housing Team, on 23 January 2019. She made him aware of the licencing scheme and he told her that he had not been living at 39 Cromwell Road and had not received the Respondent's letters. He did not provide an alternative address and asked for all communications to be sent to his email address. The conversation was recorded in an email sent to the Appellant on 28 January 2019. Ms Cole provided this evidence in her witness statement and it was not disputed by the Appellant.

20. The Respondent received an application for two licences from the Appellant on 4 February 2019, more than 3 months after the start of the licencing scheme. The Respondent dealt with applications in the order they were received. There were 388 outstanding applications to be processed ahead of the Appellant's application. The Respondent acknowledged receipt of the applications. The Council's stated aim was to deal with applications within 3 months of receipt but it was not until 12 September 2019 that it considered the Appellant's application and found that it was deficient. The application lacked all of the information required by the Respondent. The application was returned to the Appellant on 20 September 2019 with instructions about how to complete the forms correctly. An invoice was issued for £50 in

respect of the fees that applied to deficient applications.

21. The Appellant spoke to Lesley Craig, in the Council's Private Sector Housing Team, on 3 October 2019 about the licence application and they went through it together. The Respondent did not hear anything further from the Appellant and so on 25 October 2019 he was sent notice that the application had been refused. On 5 November 2019, the Appellant was invited to attend an interview under caution. The interview took place of 19 November 2019. During the interview the Appellant accepted that the properties were not licenced and he put forward several reasons to explain this. This evidence is set out in the Respondent's witness statements and was not challenged by the Appellant.

22. On 27 November 2019, the Respondent was contacted by Seal Properties, a local firm of managing agents, who had been instructed by the Appellant to manage his properties. An application was submitted on 28 November 2019 but the application fees were not received until 12 December 2019 when the application was treated as duly made.

The Offences

23. The Appellant accepts that both properties were tenanted, that he was in control of the premises and that there were no licences in place, as required. This constitutes offences under s.95(1) of the Act.

24. It is a defence under s.95(3)(b) that at the material time an application had been duly made under s.87 and that the application was still effective. S.87(2) provides that the application must be made in accordance with such requirements as the authority may specify. The Appellant submitted his application on 4 February 2019 and this was acknowledged by the Respondent. There was a significant delay until 12 September 2019 when the Council looked at the application. It was found to be defective and was returned to the Appellant on 20 September 2019. The Respondent provided the Appellant with advice about how to complete the application and he attended an interview under caution on 19 November 2019. It was only after the Appellant instructed a managing agent to act for him, that the Respondent received a properly completed application on 28 November 2019 and even then, the application was not duly made until 12 December 2019 when the fees were paid. The Tribunal finds that properties were unlicensed between 30 October 2018 and 11 December 2019.

25. There is a defence under s.95(4)(a) if the Appellant has a reasonable excuse for failing to obtain the licences. In his written representations made in response to the notices of intent, the Appellant stated that he had experienced significant personal turmoil, including being the main carer for his father who passed away on 26 June 2018, a period of personal ill health and a divorce as a result of which he left the family home and had no permanent address.

26. This needs to be considered against the fact that the Appellant has been a landlord for more than 10 years, he owns 4 properties, and he already had the experience of the selective licencing scheme in Chopwell. He was informed about the proposed Avenues licencing scheme in November 2017 and the Respondent wrote to him twice before the scheme was introduced on 30 October 2018. The Appellant was sent a warning letter on 30 November 2018 and another letter on 9 January 2019. It was the Appellant's responsibility to provide

the Respondent with an address where he could be contacted. He used the same Harrow address on the application form when it was submitted on 4 February 2019, 3 months after the start of the scheme. The Appellant had many months to submit the application before the scheme started. It was the Appellant's responsibility to provide the Respondent with an address where he could be contacted or to make arrangements for his post to be collected if he was not there. It is not a reasonable excuse for the Appellant simply to say that he did not receive the letters.

27. The Appellant has good reason to complain about the time it took the Respondent to consider the application which was well outside its own target of 3 months but it was his responsibility to complete the application form correctly. The Tribunal recognises that the form is complex and requires a considerable amount of detailed information. There was further delay on the Appellant's part after the application was returned to him on 20 September 2019. A duly completed application was not received until 12 December 2019 which means the properties were unlicenced for more than 13 months. There is no reasonable excuse for the further delay.

28. On these facts, the Tribunal finds that the Appellant does not have a reasonable excuse under s.95(4)(a). The Tribunal is satisfied beyond reasonable doubt that between 30 October 2018 and 11 December 2019 the Appellant committed two offences under s.95(1).

Penalty

29. When considering the amount of the penalties to be imposed, the Tribunal is required to pay great attention to the Respondent's Enforcement Policy and it should be slow to depart from it. The burden is on the Appellant to persuade the Tribunal to take a different course - Waltham Forest LBC v Marshall [2020] UKUT 35 (LC) endorsed by the Court of Appeal in Sutton v Norwich [2021] EWCA Civ 20.

30. The Respondent decided to impose financial penalties as an alternative to criminal prosecution. This was consistent with the Council's Enforcement Guidance and the Crown Prosecution Service Code for Crown Prosecutors. The Respondent took into account the seriousness of the offences and the culpability of the landlord and concluded that there was sufficient evidence to proceed with a prosecution and that it was in the public interest to take action. Whilst the offences were serious, the Respondent decided to deal with the offences by way of financial penalties because the occupiers had not suffered any harm, they were not considered to be vulnerable and the breach was not detrimental to the neighbourhood or a nuisance. Further, the Appellant had not been previously subject to legal action and he has now applied for and obtained licences for the properties.

31. The Respondent's Enforcement Guidance at paragraph 2.18 sets out a 5 stage process:

    (1) determines the penalty band for the offence and sets out the starting amount and a maximum amount,

(2) determines how much will be added to or taken away from the starting amount as a result of the landlord's track record and how much will be added as a result of the landlord's income. If the amount calculated is less than the upper limit for the penalty band, then this is the amount that will be used for stage 3, however if the amount calculated is greater than the upper limit for the penalty band, then the upper limit will be used for stage 3,

(3) considers any financial benefit that the landlord may have obtained from committing the offence. If the amount calculated is less than the upper limit for the penalty band, then this is the amount that will be used to continue in stage 4. However, if the amount calculated is greater than the upper limit for the penalty band, then the actual amount will be used in stage 5 instead,

(4) considers the costs of investigating, determining and applying a financial penalty,

(5) considers and combines the results of stages 1-4 and provides the final financial penalty amount, to a maximum of £30,000.

32. The Respondent's policy mandates the use of a matrix to determine the amount of the penalty. The matrix is divided into 5 penalty levels, providing an indicative minimum and maximum charge with the amount being adjusted to consider other relevant factors.

Stage 1

33. Culpability: the Respondent assessed the Appellant's culpability as "reckless behaviour" - level 3 - which is described in the Guidance as acting with foresight or wilful blindness where the offender fell far short of their legal duties, for example by ignoring warnings or requests. The Appellant would like his culpability to be considered as negligent – level 2- as a consequence of his difficult personal situation at the time. The Enforcement Policy describes "negligent behaviour" in terms of a failure to take reasonable care particularly when there are systems in place to manage risk and comply with legal duties. The Tribunal must make its own assessment on the basis of the evidence and applying the Enforcement Policy.

34. The Appellant was or certainly should have been aware of his legal duties as a landlord. He is a professional landlord with many years' experience including the management of another property in a selective licencing area. The licence application should have been made before the scheme started and it was made 3 months late. The Tribunal takes account of the Appellant's personal circumstances which may have contributed to the delay. The period between the application being submitted and it being accepted as duly made was significantly extended by the Respondent's slow response. The Council must have anticipated that it would receive a great many applications and should have devoted sufficient resources to processing them. There was further delay on the Appellant's part after he was told that the application was deficient and it being duly made.

35. The Guidance defines "reckless behaviour" in terms of a deliberate act done with full knowledge of the consequences. This has been described as "an inaccurate habit" (ICI Ltd. v Shatwell [1965] AC 656). In contrast, a "negligent" act arises where someone either fails to

consider the consequences of a particular action or having considered them, fails to give them the appropriate weight. There are inevitably shades of meaning, but "reckless" connotes intent whereas "negligent" implies an omission to do something. On the evidence in the present cases, the Tribunal finds that the Appellant's behaviour was negligent rather than reckless. He did not act intentionally, but he was negligent in his failure to deal with his legal responsibilities as a landlord. The Appellant knew what was required of him but he did not deliberately set out to ignore matters. He gave insufficient attention to his business to ensure he obtained the necessary licences.

36. Harm: The Policy defines the seriousness of the harm caused by an offence as including any physical injury or damage to health, psychological distress to victims, harm to the community, economic loss and harm to public health and damage to public feeling. There are 4 levels of harm all related to the HHSRS assessment of the properties. The Respondent assessed the level of harm as medium, which is described as: "disturbance, neuro-psychological impairment, dermatitis, severe stress, fractures, serious puncture wounds, severe strains, burns, migraines. There may have been a medium harm outcome from any ASB/Nuisance/Criminality at the Property or Breach of any other requirement designed to protect TEN/ensure Property well managed (such as unlawful eviction, harassment of TEN, absence of Gas Certificate/Smoke Detection)".

37. The Appellant submits that the appropriate level of harm is low because the tenants have not experienced any adverse consequences. The Enforcement Policy describes "low" level harm as: "moderate cuts, significant bruising, regular serious coughs or colds, warrant medical attention. There may have been a low harm outcome from any other ASB/Nuisance/Criminality at the Property or Breach of any other requirement designed to protect TEN/ensure Property well managed (such as unlawful eviction, harassment of TEN, absence of Gas Certificate/Smoke Detection)".

38. Selective licencing schemes are intended to raise standards in private rented property and to drive criminal or unscrupulous landlords in particular areas where private letting is problematic for the wider community. "Harm" has a wider meaning than just physical or mental injury, as recognised by the Guidance, but by linking the level of harm directly to the HHSRS emphasis is given to any defects in the property. The Respondent bases its assessment of harm on the category 1 and 2 hazards found when the properties were inspected. Ms Wilkie, in her oral evidence, described them as "minor". When the details are considered, the Tribunal shares her view, that the deficiencies are relatively minor. The Appellant was given written advice and with the exception of one item, he carried out the necessary works and there was no need for improvement notices to be issued. The definitions of both the "medium" and "low" levels of harm "may" have outcomes related to the other objectives of selective licencing.

39. The Tribunal concludes in respect of both properties, that the level of harm should be described as "low" applying the Enforcement Guidance.

40.

41. The Matrix: Applying these findings about culpability and harm to the matrix in the Enforcement Policy produces the following result: the range of penalty is between £2,000 and £4,000. The starting point is £3,000 which allows for any aggravating or mitigation factors to increase or reduce the penalty to the top or lower end of the range, subject to a maximum addition or reduction of £1,000.

Stage 2

42. Track record: the statutory guidance provides that a landlord's tract record should be considered in ensuring that a penalty is set at an appropriate level. Under the Respondent's Enforcement Policy, a higher penalty will be appropriate where the offender has a history of failing to comply with their obligations and/or their actions were deliberate and/or they knew or ought to have known that they were in breach of their legal obligations.

43. The Appellant submits that he has not been subject to any similar proceedings during his time as a landlord and points out that there are no aggravating circumstances. However, he owned the Chopwell house and was called to a PACE interview in April 2011 even if the licence was eventually issued to his wife, Romona Babakhanians, as the person having control of or managing the property.

44. During the licencing process, 58 Eastbourne Avenue was inspected and 13 deficiencies were identified as either category 1 or category 2 hazards under the Housing, Health and Safety Rating System. When 176 Westbourne Avenue was inspected, 5 category 1 or category 2 hazards were found. Once the Appellant was notified about the problems, he undertook the necessary works within the timescales required in respect of all but one of the items of repair. No improvement notices were issued.

45. Aggravating factors and mitigating factors: the Respondent's Enforcement Policy states that to ensure that the punitive charge is set at an appropriate level, the Council will consider all the factors identified in the statutory guidance. It goes on to say that any aggravating factors will increase the amount of the penalty from the starting point and any mitigating factors will cause the penalty to fall below the starting point. Examples are given of 3 aggravating factors and 5 mitigating factors. The statutory guidance does not expressly refer to aggravating and mitigating factors.

46. The Respondent has used a points-based system to assess any aggravating and mitigating factors. There is no provision for this in either the Enforcement Policy or the Enforcement Guidance. However, it is a convenient method of calculating by how much to increase or decrease the starting figure, subject to the lower and higher ends of the range.

47. The penalty calculation sheet used by the Respondent provides for 10 aggravating factors and 6 mitigating factors. This cannot be a definitive list of the factors to be considered. An aggravating factor such as more than one previous offence can result in multiples of 5 points been given, whereas a mitigating factor can only be given a maximum of 5 points. This method of attributing points is weighed very heavily against a landlord.

48. The Respondent has not identified any aggravating factors that would increase the amount of the penalty from the starting point. The Tribunal adopts this position. The Respondent has identified 5 mitigating factors and given a total of 25 points which reduces the penalty by £833.33. The Tribunal will also adopt this course of action.

Stage 3

49. The Appellant's financial position: the Respondent's Enforcement Policy allows the Council to conclude that the offender is able to pay any financial penalty, in the absence of any evidence from the offender to the contrary. In the present cases, the Respondent considers the offences to be "moderate" because the level of penalties falls within the lower third of the potential maximum of £30,000. A full financial investigation has not been undertaken. Only the income that the Appellant received during the commission of the offences has been taken into account. The Tribunal has no reason to take a different course.

50. The Tribunal has little reliable evidence about the Appellant's financial position. The Respondent has undertaken an exercise to value his 5 properties, including the house in Harrow which is jointly owned by the Appellant and his wife and the 4 houses in Gateshead. The estimated value is £763,000 but this does not reflect the equity in the properties. The inclusion of information about the Appellant's companies is misconceived because it does not attempt to value the companies themselves and is based on very little evidence.

51. Financial benefit from committing the offence: the statutory guidance sets as a guiding principle that financial penalties should remove any financial benefit that the landlord may have obtained as a result of committing the offence. The Respondent's statement of case relies on the Enforcement Policy but this only refers to any financial benefit in general terms. The Council's Enforcement Guidance states that any financial benefit will be included in the civil penalty calculation. The Respondent considers that the financial gain in respect of unlicenced Part 3 properties to be the rental income earned from letting the property because the Appellant "had no authority to let in the absence of a licence during the period of the offence".

52. In his written representations, the Appellant stated that the income received from his portfolio, including the two properties subject to the penalties, is relatively small with the values being in negative equity or having very little capital available and overall, his portfolio shows no sign of appreciation in the market. He stated that the penalty will make it very difficult to remain solvent, worsened by divorce proceedings and his current overall financial position.

53. The Appellant could have avoided any penalties at all by applying for a licence in advance of the start of the scheme, but the application was made 13 weeks late putting him in default. The Respondent failed to process the application within its own time frame of 3 months and it has capped the time between the submission of the application and its return to the Appellant at 12 weeks. The time allowed to process the application is too long. It should have been possible for the Respondent to have identified the problems with the application and return it to him within 28 days. A double penalty has been imposed on the Appellant, a

£50.00 fine and a claim for financial benefit over an extended period. There was then a delay of 10 weeks before the application was duly made. The period that the properties were unlicenced should therefore be treated as 27 weeks.

54. The monthly rent for both properties was £405.00 or £93.21 per week. The Respondent originally calculated the rent over a period of 36 weeks but this has been amended to 35 weeks. The gross rent is calculated at £2,516.67. No account has been taken of the Appellant's expenditure, such as insurance or maintenance costs. It would be wrong to take account of any mortgage repayments because that properly would reflect in the capital value of the properties and stand to the Appellant's credit. The Appellant has not provided any evidence on which the Tribunal can try to assess the net financial benefit to the Appellant. He has not put a figure on this himself. In these circumstances, on the only evidence available, the Tribunal assesses the financial benefit at £2,516.67.

Stage 4

55. Costs the Enforcement Policy provides for the costs of investigating the offences and preparing the case for formal action to be included in the calculation of the penalty. The Respondent has calculated the Investigative costs for each of the offences by determining the average number of hours taken to complete the work and the hourly rate of the officers involved. The costs are then broken down into three levels, low, medium and high – as presented in the Councils Enforcement Policy. The cost band in respect of the two financial penalties imposed was assessed as medium which is £300. The Tribunal adopts the same approach and adds costs of £300.

Stage 5

56. The Guidance states that stage 5 "considers and combines the results of stages 1 to 4 and provides the final amount of the penalty to a maximum of £30,000. Proportionality?

Conclusions

57. The Tribunal's calculation of the penalties to be imposed for each property, based on the Enforcement Policy is as follows:

| | | |
|---|---|---|
| Penalty starting point | | £3,000.00 |
| Changes due to offender's income | £ | 0.00 |
| Reduction for mitigation / Addition for aggravation (25 points) | | £ 833.33 |
| Financial benefit | | £2,516.67 |
| Costs | | £ 300.00 |
| Total | | £4,983.34 |

58. Tribunal therefore imposes a penalty of £4,983.34 on the Appellant in respect of both 58 Eastbourne Avenue and 176 Westbourne Avenue.

**Dated 23 August 2021**
**Judge P Forster**

## RIGHT OF APPEAL

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.

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.

If the person wishing to appeal does not comply with the 28-day time limit, that 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.

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.