



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

**Case Reference** : **BIR/00FY/HSI/2024/0001**  
**BIR/00FY/HSI/2024/0002**  
**BIR/00FY/HSI/2024/0006**

**Property** : **33 Wells Road, Nottingham, NG3 3AP**  
**62 Ransom Road, Nottingham, NG3 3LJ**  
**366 Alfreton Road, Nottingham, NG7 5NE**

**Applicant** : **Nottingham City Council**

**Respondent** : **Mr Craig Thomas Hawes**

**Type of Application** : **Rent Repayment Order Applications (s.66  
Housing and Planning Act 2016)**

**Tribunal Members** : **Judge C Kelly**

**Date of Decision** : **24 March 2025**

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**DECISION**

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**1. Introduction**

- 1.1. Nottingham City Council (“the Council” / “the Applicant”) seeks Rent Repayment Orders (RRO) against Mr. Craig Thomas Hawes (“the Respondent”) in respect of three properties in Nottingham which, the Council contends, were required to be licensed under Part 3 of the 2004 Act (selective licensing) but were not.
- 1.2. The Applicants are made pursuant to the provisions of the Housing Act 2004 (“the 2004 Act”) and the Housing and Planning Act 2016 (“the 2016 Act”).
- 1.3. The applications relate to the following properties:
  - 1.3.1. 33 Wells Road, NG3 3AP
  - 1.3.2. 62 Ransom Road, NG3 3LJ
  - 1.3.3. 366 Alfreton Road, NG7 5NE

- 1.4. According to the Council, each property is within an area designated for selective licensing from 1 August 2018 onwards.
- 1.5. The Respondent has not taken part in these proceedings.
- 1.6. For each property, the Council seeks repayment of Housing Benefit disbursed during a 12-month period between December 2021 and December 2022 in which (it says) an unlicensed property offence was being committed totalling:
  - 1.6.1.33 Wells Road: £7,199.96
  - 1.6.2. 62 Ransom Road: £7,499.96
  - 1.6.3. 366 Alfreton Road: £5,939.96

## **2. Procedural History**

- 2.1. On 11 September 2023, the Council lodged RRO applications in respect of each of three separate properties with the Tribunal. They included the Council's statement of reasons, relevant notices, evidence of commission of an offence and Housing Benefit payment details.
- 2.2. On 16 May 2024, Tribunal Judge V Ward BSc Hons FRICS (Regional Surveyor) issued Consolidated Directions, requiring:
  - 2.2.1. The Applicant to confirm its final statement of case and evidence.
  - 2.2.2. The Respondent to serve a statement of case and supporting evidence by 5 July 2024.
- 2.3. The Respondent did not file any response or evidence as directed or at all.
- 2.4. On 13 August 2024, the Tribunal sent notice of intention to bar the Respondent for non-compliance under Rule 9(3)(a) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("the Rules").
- 2.5. The Respondent made no material representations to remedy the default.
- 2.6. On 17 December 2024, the Tribunal formally barred the Respondent from taking further part in these proceedings pursuant to Rules 9(7)(a) and 9(8). No further material was received from him. As a result, the Tribunal proceeded to determine the applications on the Council's evidence alone.

## **3. Factual Background**

- 3.1. Due to the absence of the Respondent from the proceedings, the facts can be taken as those provided by the Council in their submissions and supporting documentation.
- 3.2. The three properties lie within a Nottingham City selective licensing area designated under Part 3 of the 2004 Act, effective since 1 August 2018. Any person who manages or controls a "Part 3 house" in such an area must obtain a licence from the local authority.
- 3.3. The council confirmed in its statement of reasons at paragraph 5 that:

*“The Properties are located within the Selective Licensing designated area of Nottingham City, which came into force on 1 August 2018. The area of designation is shown on the map (Document 1).”*

- 3.4. The Council states that its records show each property was not licensed during at least part of 2021–2022. The Respondent is said to have managed or controlled these properties throughout that time, thus falling within the scope of section 95(1) of the 2004 Act.
- 3.5. Between December 2021 and December 2022, the Council paid Housing Benefit to or on behalf of tenants residing in each property. Summaries of those payments show:
  - 3.5.1. £7,199.96 (33 Wells Road)
  - 3.5.2. £7,499.96 (62 Ransom Road)
  - 3.5.3. £5,939.96 (366 Alfreton Road)
- 3.6. Housing Benefit was confirmed by the relevant third-party department to the Council and schedules of payments provided. All payments span the entire 12-month period of concern. Council representatives attended each of the properties in February 2022 and identified the existence of tenants at the properties.
- 3.7. The Council claims repayment of the sums of Housing Benefit it paid for the period December 2021 to December 2022.
- 3.8. On 27 June 2023, the Council served Civil Penalty Notices under s.95(1) of the 2004 Act on the Respondent for failing to license each property; this is evidenced by a Certificate of Service dated 27 June 2023. No appeal was lodged. On 27 June 2023, the Council served Notices of Intended Proceedings under section 42 of the 2016 Act, stating its intention to seek RROs and inviting representations within 28 days. None were received.

#### **4. The parties’ positions**

- 4.1. The Council relies on sections 40–46 of the Housing and Planning Act 2016 to establish that:
  - 4.1.1. the Respondent committed an offence under section 95(1) of the 2004 Act (failure to license);
  - 4.1.2. the Council, having issued financial penalties (which remain unchallenged), triggers the mandatory RRO provisions under section 46; and
  - 4.1.3. since no “exceptional circumstances” have been raised by the Respondent (or indeed, any circumstances at all), the Tribunal must order repayment of the full Housing Benefit sums for the relevant 12-month period.
- 4.2. The Respondent has not engaged with these proceedings and was barred from resisting them by order of 17 December 2024. Rule 9(8) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 states that the Tribunal need not consider any response of other submission made by the Respondent absent the barring restriction being lifted.

#### **5. The legal framework**

- 5.1. Section 95(1) of the 2004 Act, and sections 40–46 of the 2016 Act, the full text of which is annexed to this decision, are the main provisions of concern in this Application.
- 5.2. Sections 40–46, 2016 Act: Provides for rent repayment orders where a landlord has committed an offence, including failure to license under the 2004 Act. If a civil penalty has been imposed and not appealed, the Tribunal *must* (subject only to “exceptional circumstances”) direct repayment of up to 12 months of rent or Housing Benefit.
- 5.3. Section 40: sets out the relevant offences which may lead to the grant of a RRO. They include an offence of controlling or managing an unlicensed housing under s.95 of the 2004 Act.
- 5.4. Section 42(1): Before applying for a RRO, a local housing authority must give the landlord notice of intended proceedings.
- 5.5. Section 42(2) A notice intended proceedings must (a) inform the landlord that the authority is proposing to apply for a RRO and explain why, (b) state the amount the authority seeks to recover, and (c) invite the landlord to make representations within a period specified in the notice of not less than 28 days. The authority must consider any representations made during the notice period; there can be no application for a RRO prior to the notice period expiring. A notice of intended proceedings cannot be given after 12 months from the date the landlord committed the offence to which it relates.
- 5.6. Section 43: A RRO may be made if the Tribunal is satisfied, beyond reasonable doubt, that a landlord has committed an offence to which Chapter 5 of the 2016 Act applies (i.e. control or management of an unlicensed house).
- 5.7. Section 45: determines the amount of any RROs on local authority applications. For offences of managing or controlling an unlicensed house under s.95(1) of the 2004 Act, the amount of the RRO is mandated to relate to universal credit paid during the period mentioned in the table in s.45(2), being in this case, a period not exceeding 12 months during which the landlord was committing the offence. The amount must not exceed the amount of universal credit that the landlord received (directly or indirectly) in respect of rent under the tenancy for that period. Regards must be had to the (a) conduct of the landlord, the financial circumstances of the landlord and whether the landlord has at any time been convicted of an offence to which the provisions apply.
- 5.8. Section 46: where a RRO is made, and (a) the landlord has been convicted of an offence to which the provisions apply, or a civil penalty has been imposed without prospect of appeal, and (b) the order is made in favour of a local authority, or a tenant in respect of certain offences, then the amount to be ordered is the maximum, unless there are exceptional circumstances that render it unreasonable to require such payment.
- 5.9. Section 95(1), 2004 Act: A person having control or managing a house in a selective licensing area must have a licence; failing to do so is a criminal offence. The section provides potential defences, none of which are relevant on the facts.
- 5.10. The Council’s references to Housing Benefit payment records (dates, amounts, and to whom they were paid) are important evidence. They show how much public money was paid toward the rent for each unlicensed property and form the basis for calculating the sum the Council aims to recover via the RRO.

5.11. The full text of the relevant provisions is set out in the Appendix.

## **6. Findings and reasons**

- 6.1. The Tribunal is satisfied beyond reasonable doubt, from the uncontested evidence, that the Respondent controlled or managed each property without the requisite selective licence, contrary to section 95(1) of the 2004 Act.
- 6.2. Under section 46 of the 2016 Act, where a financial penalty has been imposed and the time for appeal has expired with no appeal, the Tribunal must require the landlord to repay the maximum amount of Housing Benefit for the relevant period (up to 12 months), unless there are exceptional circumstances making it unreasonable.
- 6.3. The Respondent offered no mitigating evidence or explanation for his failures. The Tribunal finds no basis to reduce the amounts the Council seeks.

## **7. Decision**

- 7.1. The Tribunal hereby orders that the Respondent shall pay to Nottingham City Council the following amounts pursuant to section 40 of the 2016 Act:
  - 7.1.1. 33 Wells Road (Ref BIR/ooFY/HIS/2024/0001): £7,199.96
  - 7.1.2. 62 Ransom Road (Ref BIR/ooFY/HIS/2024/0002): £7,499.96
  - 7.1.3. 366 Alferton Road (Ref BIR/ooFY/SHS/2024/0006): £5,939.96

**FTT Judge Kelly**  
**Dated: 14<sup>th</sup> March 2025**

### **Appeal Provisions**

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).

## APPENDIX

### Text of Relevant Legislation

#### A. Section 95, Housing Act 2004 – offences

- (1) A person commits an offence if he is a person having control of or managing a house which is required to be licensed under this Part (see section 85(1)) but is not so licensed.
- (2) A person commits an offence if—
- (a) he is a licence holder or a person on whom restrictions or obligations under a licence are imposed in accordance with section 90(6), and
  - (b) he fails to comply with any condition of the licence.
- (3) In proceedings against a person for an offence under subsection (1) it is a defence that, at the material time—
- (a) a notification had been duly given in respect of the house under section 62(1) or 86(1), or
  - (b) an application for a licence had been duly made in respect of the house under section 87, and that notification or application was still effective (see subsection (7)).
- (4) In proceedings against a person for an offence under subsection (1) or (2) it is a defence that he had a reasonable excuse—
- (a) for having control of or managing the house in the circumstances mentioned in subsection (1), or
  - (b) for failing to comply with the condition, as the case may be.
- (5) A person who commits an offence under subsection (1) is liable on summary conviction to a fine.
- (6) A person who commits an offence under subsection (2) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (6A) See also section 249A (financial penalties as alternative to prosecution for certain housing offences in England).
- (6B) If a local housing authority has imposed a financial penalty on a person under section 249A in respect of conduct amounting to an offence under this section the person may not be convicted of an offence under this section in respect of the conduct.
- (7) For the purposes of subsection (3) a notification or application is “effective” at a particular time if at that time it has not been withdrawn, and either—
- (a) the authority have not decided whether to serve a temporary exemption notice, or (as the case may be) grant a licence, in pursuance of the notification or application, or
  - (b) if they have decided not to do so, one of the conditions set out in subsection (8) is met.
- (8) The conditions are—
- (a) that the period for appealing against the decision of the authority not to serve or grant such a notice or licence (or against any relevant decision of the appropriate tribunal has not expired, or
  - (b) that an appeal has been brought against the authority’s decision (or against any relevant decision of such a tribunal) and the appeal has not been determined or withdrawn.
- (9) In subsection (8) “relevant decision” means a decision which is given on an appeal to the tribunal and confirms the authority’s decision (with or without variation).

#### B. Sections 40 – 46, Housing and Planning Act 2016

##### *Rent repayment orders: introduction*

#### **40 Introduction and key definitions**

(1) This Chapter confers power on the First-tier Tribunal to make a rent repayment order where a landlord has committed an offence to which this Chapter applies.

(2) A rent repayment order is an order requiring the landlord under a tenancy of housing in England to—

(a) repay an amount of rent paid by a tenant, or

(b) pay a local housing authority an amount in respect of a relevant award of universal credit paid (to any person) in respect of rent under the tenancy.

(3) A reference to “an offence to which this Chapter applies” is to an offence, of a description specified in the table, that is committed by a landlord in relation to housing in England let by that landlord.

	<i><b>Act</b></i>	<i><b>section</b></i>	<i><b>general description of offence</b></i>
1	Criminal Law Act 1977	section 6(1)	violence for securing entry
2	Protection from Eviction Act 1977	section 1(2), (3) or (3A)	eviction or harassment of occupiers
3	Housing Act 2004	section 30(1)	failure to comply with improvement notice
4		section 32(1)	failure to comply with prohibition order etc
5		section 72(1)	control or management of unlicensed HMO
6		section 95(1)	control or management of unlicensed house
7	This Act	section 21	breach of banning order

(4) For the purposes of subsection (3), an offence under section 30(1) or 32(1) of the Housing Act 2004 is committed in relation to housing in England let by a landlord only if the improvement notice or prohibition order mentioned in that section was given in respect of a hazard on the premises let by the landlord (as opposed, for example, to common parts).

#### **41 Application for rent repayment order**

(1) A tenant or a local housing authority may apply to the First-tier Tribunal for a rent repayment order against a person who has committed an offence to which this Chapter applies.

(2) A tenant may apply for a rent repayment order only if —

(a) the offence relates to housing that, at the time of the offence, was let to the tenant, and

(b) the offence was committed in the period of 12 months ending with the day on which the application is made.

(3) A local housing authority may apply for a rent repayment order only if—

(a) the offence relates to housing in the authority's area, and

(b) the authority has complied with section 42.

(4) In deciding whether to apply for a rent repayment order a local housing authority must have regard to any guidance given by the Secretary of State.

#### **42 Notice of intended proceedings**

(1) Before applying for a rent repayment order a local housing authority must give the landlord a notice of intended proceedings.

- (2) A notice of intended proceedings must—
- (a) inform the landlord that the authority is proposing to apply for a rent repayment order and explain why,
  - (b) state the amount that the authority seeks to recover, and
  - (c) invite the landlord to make representations within a period specified in the notice of not less than 28 days (“the notice period”).
- (3) The authority must consider any representations made during the notice period.
- (4) The authority must wait until the notice period has ended before applying for a rent repayment order.
- (5) A notice of intended proceedings may not be given after the end of the period of 12 months beginning with the day on which the landlord committed the offence to which it relates.

### **43 Making of rent repayment order**

- (1) The First-tier Tribunal may make a rent repayment order if satisfied, beyond reasonable doubt, that a landlord has committed an offence to which this Chapter applies (whether or not the landlord has been convicted).
- (2) A rent repayment order under this section may be made only on an application under section 41.
- (3) The amount of a rent repayment order under this section is to be determined in accordance with—
- (a) section 44 (where the application is made by a tenant);
  - (b) section 45 (where the application is made by a local housing authority);
  - (c) section 46 (in certain cases where the landlord has been convicted etc).

### **44 Amount of order: tenants**

- (1) Where the First-tier Tribunal decides to make a rent repayment order under section 43 in favour of a tenant, the amount is to be determined in accordance with this section.
- (2) The amount must relate to rent paid during the period mentioned in the table.

<b><i>If the order is made on the ground that the landlord has committed</i></b>	<b><i>the amount must relate to rent paid by the tenant in respect of</i></b>
an offence mentioned in row 1 or 2 of the table in section 40(3)	the period of 12 months ending with the date of the offence
an offence mentioned in row 3, 4, 5, 6 or 7 of the table in section 40(3)	a period, not exceeding 12 months, during which the landlord was committing the offence

- (3) The amount that the landlord may be required to repay in respect of a period must not exceed—
- (a) the rent paid in respect of that period, less
  - (b) any relevant award of universal credit paid (to any person) in respect of rent under the tenancy during that period.
- (4) In determining the amount the tribunal must, in particular, take into account—
- (a) the conduct of the landlord and the tenant,
  - (b) the financial circumstances of the landlord, and
  - (c) whether the landlord has at any time been convicted of an offence to which this Chapter applies.

### **45 Amount of order: local housing authorities**

- (1) Where the First-tier Tribunal decides to make a rent repayment order under section 43 in favour of a local housing authority, the amount is to be determined in accordance with this section.



(2)The amount must relate to universal credit paid during the period mentioned in the table.

***In the order is made on the ground that the landlord has committed***

***the amount must relate to universal credit paid in respect of***

an offence mentioned in row 1 or 2 of the table in section 40(3)

the period of 12 months ending with the date of the offence

an offence mentioned in row 3, 4, 5, 6 or 7 of the table in section 40(3)

a period, not exceeding 12 months, during which the landlord was committing the offence

(3)The amount that the landlord may be required to repay in respect of a period must not exceed the amount of universal credit that the landlord received (directly or indirectly) in respect of rent under the tenancy for that period.

(4)In determining the amount the tribunal must, in particular, take into account—

(a)the conduct of the landlord,

(b)the financial circumstances of the landlord, and

(c)whether the landlord has at any time been convicted of an offence to which this Chapter applies.

**46Amount of order following conviction**

(1)Where the First-tier Tribunal decides to make a rent repayment order under section 43 and both of the following conditions are met, the amount is to be the maximum that the tribunal has power to order in accordance with section 44 or 45 (but disregarding subsection (4) of those sections).

(2)Condition 1 is that the order—

(a)is made against a landlord who has been convicted of the offence, or

(b)is made against a landlord who has received a financial penalty in respect of the offence and is made at a time when there is no prospect of appeal against that penalty.

(3)Condition 2 is that the order is made—

(a)in favour of a tenant on the ground that the landlord has committed an offence mentioned in row 1, 2, 3, 4 or 7 of the table in section 40(3), or

(b)in favour of a local housing authority.

(4)For the purposes of subsection (2)(b) there is “no prospect of appeal”, in relation to a penalty, when the period for appealing the penalty has expired and any appeal has been finally determined or withdrawn.

(5)Nothing in this section requires the payment of any amount that, by reason of exceptional circumstances, the tribunal considers it would be unreasonable to require the landlord to pay.