



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

**Case reference** : **CAM/22UH/HNB/2024/0001 to 0003**

**Properties** : **a) 49 Felstead Road, Loughton IG10 3BB**  
**b) 12 School House Gardens, Loughton IG10 3PD**  
**c) 97 Epping New Road, Buckhurst Hill, IG9 5DQ**

**Applicant** : **Mr Jayanti Patel**

**Representative** : **Guy Ladenburg of Counsel**

**Respondent** : **Epping Forest District Council**

**Representative** : **Ms O'Brien of Counsel**

**Date of Application** : **19 December 2023**

**Type of application** : **Appeal against financial penalty, pursuant to s.249A and Sch.13A to the Housing Act 2004,**

**The Tribunal** : **Tribunal Judge S Evans**  
**Mr Mohammed Bhatti MBE**

**Date/ place of hearing** : **17 March 2025**  
**By Video**

**Date of decision** : **22 April 2025**

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**DECISION**

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## DECISION

**(1) The Applicant's appeal is allowed in part, to the extent that the Tribunal determines the appropriate financial penalty in all the circumstances should be a total of £60,200;**

**(2) The Respondent shall pay the application and hearing fees, in the sum of £330, to the Applicant.**

## REASONS

### Relevant Law

1. The statute law applicable to this matter is set out in the Appendix attached.
2. The Tribunal is mindful of the cases of *Sutton v Norwich CC* [2020] UKUT 90 (LC) and *London Borough of Waltham Forest v Marshall* [2020] UKUT 0035 (LC), in which the Upper Tribunal emphasised that the First Tier Tribunal should give due deference to the Council's decision, and not depart from a local authority's Policy in determining the amount of a financial penalty, except in certain circumstances (e.g. where the Policy was applied too rigidly), albeit that the Tribunal's task is not simply a matter of reviewing whether a penalty imposed was reasonable: it must make its own determination as to the appropriate amount of the penalty, having regard to all the available evidence.

### The Parties and other persons

3. The Applicant is J Patel, a director of Abbey Total Care Group Ltd ("ATCGL") and one of its subsidiaries, Martlane Ltd ("ML").
4. The Applicant's son, Aniket Patel, is an employee of ATCGL and a former councillor, and lives with the Applicant.
5. The Respondent is Epping Forest District Council.

### The Properties

6. The Properties concerned in this application are:

- (1) 49 Felstead Road, Loughton IG10 3BB, a 3 bedroom semi;
- (2) 12 School House Gardens, Loughton IG10 3PD, a 3 bedroom semi;
- (3) 97 Epping New Road, Buckhurst Hill, IG9 5DQ, a 4 bedroom house.

### Background

7. All 3 Properties were used to house workers at care homes run by ATCGL after their purchase by ML.
8. ML bought 49 Felstead Rd on 22 December 2021.
9. On 12 January 2022 Aniket Patel spoke with Sally Devine of the Respondent concerning the requirements for Houses in Multiple Occupation. An email followed.
10. ML bought 97 Epping New Rd on 8 April 2022, and 12 School House Gardens on 29 April 2022.
11. In June 2023 Aniket Patel became the Chief Operating Officer of ATCGL.
12. On 29 June 2023 the Respondent inspected 97 Epping New Rd. 6 residents were found in occupation.
13. On the same day the Respondent inspected 49 Felstead Rd. There were 7 occupiers in 3 rooms, and at least 2 households.
14. On 30 June 2023 the Respondent inspected 12 School House Gardens. It found a family of 5 in occupation, another family of 4 having moved out previously on 12 May 2023.
15. On 5 July 2023 the Respondent sent the Applicant statutory notices seeking information.
16. On or about 9 July 2023 alleged breaches of HMO legislation in relation to the Properties came to the Applicant's attention, he contends.
17. On 12 July 2023 a person called Ravi Patel attended the Respondent's offices on behalf of the Applicant.
18. On the same day applications for a HMO licence were made in respect of 49 Felstead Rd and 97 Epping New Rd. 12 School House Gardens did not require one.
19. On 13 July 2023 the Respondent emailed the Applicant concerning outstanding documents.

20. On 27 July 2023 a water leak from the bathroom into the living room of 12 School House Gardens was fixed, it would appear.
21. On a date which is unclear but in 2023, HMO licences were granted in respect of 12 School House Gardens and 49 Felstead Rd, allowing a maximum of 6 persons to occupy each.
22. On 25 August 2023 the Respondent wrote to the Applicant inviting him for interview.
23. On 18 August 2023 the Respondent wrote to the Applicant's contractors with a schedule of works for 49 Felstead Rd and 97 Epping New Rd to bring them up to HMO standards.
24. A prepared statement was made for the interview by the Applicant, in which he accepted a financial penalty would be an appropriate sanction, but not prosecution.
25. On 28 September 2023 the Applicant attended a PACE interview with the Respondent. He accepted the offences of running unlicensed HMOs, but contended he was unaware until July 2023. He alleged that family members of employees had moved into the Properties without his knowledge.
26. On 29 September 2023 the Respondent prepared a case summary report.
27. On 30 September 2023 Paula Black of the Respondent made a witness statement.
28. On 6 October 2023 notices of intention to impose a financial penalty (NOIs) of £18,000 per breach per property were served on the Applicant, totalling £108,000. The 6 alleged offences were failing to licence under section 72 (x3) of failing to licence and breach of s.234 Housing Act 2004 x 3 (being no linked smoke detection; no self closing fire doors with intumescent strips; and no thumb turn locks on the exit doors).
29. On or about 3 November 2023 the Applicant made representations to the Respondent. The Respondent replied on 8 November 2023.
30. A financial penalty record was drawn up by the Respondent on 9 November 2023, before final Financial Penalty letters were sent to the Applicant on 22 November 2023. The fines in respect of each offence were reduced to £17,000. Accordingly the total fine was £102,000 in respect of the 3 Properties.

31. In May 2024 the Applicant's son Aniket Patel ceased to be a councillor.

### **The Applications**

32. On 19 December 2023 the Applicant made 3 applications to this Tribunal for an appeal against the imposition of the penalties, one for each of the 3 Properties.

33. The Grounds of Appeal are:

- (1) The Respondent's decision as to the appropriate level of fine was inconsistent with its Policy;
- (2) Disproportionate weight had been given to aggravating factors;
- (3) Insufficient weight had been given to mitigating factors;
- (4) The Respondent had not correctly applied the Totality Principle in relation to sentencing.

34. In relation to the matter of culpability, the Applicant contends it should not be a figure of 5 out of 5, because:

- (1) This was not a flagrant disregard of the law;
- (2) The Respondent could not visit the knowledge of Aniket Patel onto the Applicant;
- (3) The Applicant is not the day to day manager of the Properties; the Applicant was ignorant of the conditions therein, albeit it accepted it ought to have been aware;
- (4) The Applicant's son's involvement as a councillor has led the Respondent to aggravate the offence;
- (5) Moreover, Aniket Patel's role was in operations of ATCGL, not in the management of the Properties;
- (6) The Applicant had been very co-operative in the investigation (inconsistent with an alleged flagrant disregard for the law);
- (7) The size of the company was irrelevant (as opposed to its profits);
- (8) There was no deliberate overfilling of the Properties to gain maximum rent;
- (9) The Applicant accepts it did not monitor the situation;
- (10) The Properties provide subsidised accommodation at less than a market rent;
- (11) Further, the Properties were run at an operating loss.

35. In relation to the matter of removal of financial benefit, the Applicant contends it should not be a figure of 4 out of 5, because:

- (1) The Applicant is not a professional portfolio landlord;
- (2) Further, the Properties were run at an operating loss.
- (3) Size of the care home business is not relevant.

36. In relation to the matter of the exposure of occupants of the Properties to risk, the Applicant contends it should not be a figure of 4 out of 5, because:

(1) There are different periods of exposure in relation to each of the 3 Properties. For example:

(a) For 49 Felstead Rd, there were 5 rooms occupied by 2 families, one having 2 children and the other one. There was no deliberate overcrowding;

(b) For 97 Epping New Rd, there were 5 rooms occupied by 2 households. Each slept in one room with their young child. There was no deliberate overcrowding.

37. As regards the Totality Principle, the cumulative effect of the Financial Penalties was not a fair or proper reflection of the overall offending. In particular, no distinction had been drawn by the Respondent between the offences under section 72 and those under section 234. Each had been given the identical fine of £17,000.

38. On 12 June 2024 the Applicant provided a witness statement.

39. On 8 October 2024 the Tribunal gave directions.

40. On 9 December 2024 Aniket Patel made a witness statement.

### **The Inspection**

41. There was no inspection requested nor deemed necessary.

### **Issues**

42. The issues identified in the directions are:

(1) Whether the Local Housing Authority has complied with all of the necessary requirements and procedures relating to the imposition of the financial penalty;

(2) Whether the Tribunal is satisfied, beyond reasonable doubt, that the Applicant's conduct amounts to a "relevant housing offence" in respect of the Property;

(3) Whether the financial penalties are set at an appropriate level having regard to all relevant factors.

**(1) Whether the Local Housing Authority has complied with all of the necessary requirements and procedures relating to the imposition of the financial penalty;**

43. The Applicant confirmed at the hearing it took no point on procedure, in relation to Notices or otherwise.

**(2) Whether the Tribunal is satisfied, beyond reasonable doubt, that the Applicant's conduct amounts to a "relevant housing offence" in respect of the Property**

44. No appeal was advanced on the ground that an offence had not been committed.

**(3) Whether the financial penalties are set at an appropriate level having regard to all relevant factors.**

45. In considering this issue, the Tribunal has had regard to the Government Guidance for Local Authorities issued under paragraph 12 of Schedule 13A to the 2004 Act. The Guidance encourages each Local Authority to develop their own Policy for determining the appropriate level of penalty. The maximum amount (£30,000) should be reserved for the worse offenders. The amount should reflect the severity of the offence as well as taking into account the landlord's previous record of offending, if any. Relevant factors include:

- Punishment of the offender
- Deter the offender from repeating the offence
- Deter others from committing similar offences
- Remove any financial benefit the offender may have obtained as a result of committing the offence
- Severity of the offence
- Culpability and track record of the offender
- The harm caused to the tenant

46. As noted above, the Respondent does have such a Policy, to which the Tribunal must give due regard.

47. This Tribunal has no reason to go behind the Respondent's decision to impose a penalty, rather than a prosecution. The Applicant did not contend otherwise. Indeed, it had invited such a course at interview. We find the decision to impose a financial penalty in these circumstances to have been a legitimate approach.

*The Respondent's penalties: s.72*

48. Taking 49 Felstead first:

- (1) **Culpability** was scored at 5, on the basis this was a deliberate breach and flagrant disregard for the law; failing to apply for HMO licence following warning or prior knowledge; offender likely to be aware their actions were unlawful. Under justification, the children in the premises had been noted, as was the discussion between the Applicant's son and the council- that it was not credible to suggest that the Applicant did not know the properties required licencing;
- (2) **Removal Of Financial Incentive** was scored at 5 also, on the grounds that the Applicant was a professional portfolio landlord (5+ properties) and professional agents with significant portfolio (£100,000 + turnover). Justification the care home business was extremely profitable but tenants were paid £10.42 per hour; but while the accommodation is subsidised for the area there's still an element of profit involved, not only from the rental income but primarily from the labour within the care homes. Published accounts show the turnover for ML and ATCGL in the millions;
- (3) **Exposure To Risk** was scored at 4 (noting that weight of harm under the previous heading is not challenged at 3): On the ground this is a large HMO 5+ people. The justification says this is a 7 person HMO as there were two empty bedrooms the evidence suggests there were nine people at one point; There is noted to be no full AFD or protected route. Operating for over a year.

49. Next taking 12 SHG:

- (1) **Culpability** was scored at 5, on the basis this was a deliberate breach and flagrant disregard for the law; failing to apply for HMO licence following warning or prior knowledge; offender likely to be aware their actions were unlawful. Under justification, the children in the premises had been noted, as was the discussion between the Applicant's son and the council- that it was not credible to suggest that the Applicant did not know the properties required licencing;
- (2) **Removal Of Financial Incentive** was scored at 5 also, on the grounds that the Applicant was a professional portfolio landlord (5+ properties) and professional agents with significant portfolio (£100,000 + turnover). Justification the care home business was extremely profitable but tenants were paid £10.42 per hour; while the accommodation is subsidised for the area there's still an element of profit involved, not only from the rental income but primarily from the labour within the care homes. Published accounts show the turnover for ML and ATCGL in the millions;
- (3) **Exposure To Risk** was scored at 4 (noting that weight of harm under the previous heading is not challenged at 3): On the ground this is a large HMO 5+ people. The justification says this was a 9 person HMO, with no full AFD or



protected route; very overcrowded; significant leak from bathroom into ground floor front room.

50. Next 97 Epping New Road:

- (1) **Culpability** was scored at 5, on the basis this was a deliberate breach and flagrant disregard for the law; failing to apply for HMO licence following warning or prior knowledge; offender likely to be aware their actions were unlawful. Under justification, the children in the premises had been noted, as was the discussion between the Applicant's son and the council- that it was not credible to suggest that the Applicant did not know the properties required licencing;
- (2) **Removal Of Financial Incentive** was scored at 5 also, on the grounds that the Applicant was a professional portfolio landlord (5+ properties) and professional agents with significant portfolio (£100,000 + turnover). Justification the care home business was extremely profitable but tenants were paid £10.42 per hour; while the accommodation is subsidised for the area there's still an element of profit involved, not only from the rental income but primarily from the labour within the care homes. Published accounts show the turnover for ML and ATCGL in the millions;
- (3) **Exposure To Risk** was scored at 4 (noting that weight of harm under the previous heading is not challenged at 3): On the ground this is a large HMO 5+ people. The justification says this was a 6 person HMO, with no full AFD or protected route or thumb turn locks;

*The Respondent's penalties: s.234*

51. Taking 49 Felstead first:

- (1) Culpability was scored at 5, on the basis this was a deliberate breach and flagrant disregard for the law; failing to apply for HMO licence following warning or prior knowledge; offender likely to be aware their actions were unlawful. Under justification, reasonable due diligence would have revealed legislative requirements. Again there is reference to the Applicant's son's involvement with Sally Devine in January 2022, and his son's knowledge of requirements of the law.
- (2) Removal Of Financial Incentive was scored at 5 also, on the grounds that the Applicant was a professional portfolio landlord (5+ properties) and professional agents with significant portfolio (£100,000 + turnover).

Justification the care home business was extremely profitable but tenants were paid £10.42 per hour; while the accommodation is subsidised for the area there's still an element of profit involved, not only from the rental income but primarily from the labour within the care homes. Published accounts show the turnover for ML and ATCGL in the millions;

- (3) **Exposure To Risk** was scored at 4 (noting that weight of harm under the previous heading is not challenged at 3): On the ground this is a large HMO 5+ people. The justification says this is a 7 person HMO; as there were two empty bedrooms the evidence suggests there were 9 people at one point; There is noted to be no full AFD or protected route. Operating for over a year.

52. Next taking 12 SHG:

- (1) **Culpability** was scored at 5, on the basis this was a deliberate breach and flagrant disregard for the law; failing to apply for HMO licence following warning or prior knowledge; offender likely to be aware their actions were unlawful. Under justification, the children in the premises had been noted, as was the discussion between the Applicant's son and the council- that it was not credible to suggest that the Applicant did not know the properties required licencing;
- (2) **Removal Of Financial Incentive** was scored at 5 also, on the grounds that the Applicant was a professional portfolio landlord (5+ properties) and professional agents with significant portfolio (£100,000 + turnover). Justification the care home business was extremely profitable but tenants were paid £10.42 per hour; while the accommodation is subsidised for the area there's still an element of profit involved, not only from the rental income but primarily from the labour within the care homes. Published accounts show the turnover for ML and ATCGL in the millions;
- (3) **Exposure To Risk** was scored at 4 (noting that weight of harm under the previous heading is not challenged at 3): On the ground this is a large HMO 5+ people. The justification says this was a 9 person HMO, with no full AFD or protected route; it was very overcrowded; there was significant leak from the bathroom into ground floor front room.

53. Next taking 97 Epping New Road:

- (1) **Culpability** was scored at 5, on the basis this was a deliberate breach and flagrant disregard for the law; failing to apply for HMO licence following warning or prior knowledge; offender likely to be aware their actions were unlawful. Under justification, the children in the premises had been noted, as was the discussion between the Applicant's son and the council- that it was

not credible to suggest that the Applicant did not know the properties required licencing;

- (2) **Removal Of Financial Incentive** was scored at 5 also, on the grounds that the Applicant was a professional portfolio landlord (5+ properties) and professional agents with significant portfolio (£100,000 + turnover). Justification included the care home business was extremely profitable but tenants were paid £10.42 per hour; but while the accommodation is subsidised for the area there's still an element of profit involved, not only from the rental income but primarily from the labour within the care homes. Published accounts show the turnover for ML and ATCGL in the millions of pounds;
- (3) **Exposure To Risk** was scored at 4 (noting that weight of harm under the previous heading is not challenged at 3): On the ground this is a large HMO 5+ people. The justification says this was a 6 person HMO, with no full AFD or protected route.

## **Discussion and Determination**

54. The main points of dispute of fact in this case centred around:

- (1) The issue of culpability, more particularly whether or not there was any knowledge on the part of Aniket Patel as to HMO licencing requirements in relation to these properties, and whether or not that knowledge was passed on to the Applicant himself;
- (2) Removal of financial incentive.
- (3) The risk of harm to the tenants.

55. As to (1) above, having heard and weighed the evidence of Paula Black and Aniket Patel and the Applicant, we are not satisfied, on balance of probability, that the Applicant was aware of licensing or HMO requirements at the time of the commission of these offences. In short, we are unable to visit any knowledge on the part of his son upon him.

56. We accept they both lived at the same address, but Aniket Patel said he never had discussions about HMO Property licensing with his father, and did not forward his email to him, which was a general enquiry about whether there were different requirements when accommodating keyworkers. He may have been the registered manager for CQC purposes, but was not the day to day de facto manager. He was involved in the operational side of the care home business, not the accommodation side. The Applicant said he was unaware of the legislation side of HMOs, and was unaware of his son's emails, and that his son never discussed HMO requirements with him. The Applicant said he did not know the detail of his sons work as a councillor. He did not ask him to make the enquiry.

57. He accepted the Properties were not inspected on any periodic basis, only if there was a repair issue. We note that at one point in his evidence, the Applicant candidly volunteered, using documents before him, that 97 Epping New Road had been occupied by 8 persons, 4 adults and 4 children, more than the 6 persons found in occupation by the Respondent.
58. Against the above, the Respondent had no direct evidence of any knowledge on the part of the Applicant in relation to HMO licensing or management requirements, whether via his son or otherwise. Whilst it would be feasible for the Tribunal to share the Respondent's suspicions about the state of knowledge of the Applicant, this is not the test. We must be satisfied (but are not) that it is more likely than not there at least warning or prior knowledge or awareness on the Applicant's behalf.
59. Accordingly, the Tribunal does not consider this to have been a case of "deliberate breach and flagrant disregard for the law", nor of "warning or prior knowledge", nor an "offender likely to be aware their actions were unlawful", in relation to any of the 6 offences. A score of 5 for this element of culpability for each offence was not justified on the facts.
60. In the Tribunal's view, the culpability for each of the 6 offences should be scored at 4 (on a range of 3-4) based on "failing to put in measures that are recognised standards" (for the s.234 offences), and "failing to apply for an HMO licence" (for the s.72 offences). A score of 4 is more appropriate than 3 because of the admitted gross failure to inspect the Properties. The Applicant could do little else in these circumstances than accept the offence.
61. As to (2) above, the Respondent (including Ms Black) contended that all properties were scored individually in relation to each offence, despite the repetitiveness of the scoring outcomes. It was considered that if the offence and risk to tenants had occurred for over a year that was "fairly serious". Ms Black emphasised that 12 School House Gardens was exceptionally overcrowded with 9 persons at one time required to use 1 bathroom. She accepted that all the tenants were very happy with the arrangements they had, and agreed there was no significant distress on their part (for weight of harm purposes). She accepted the tenants would not be able to secure other accommodation at the same level of pay. She accepted very quick steps were taken after the breaches were brought to the Applicant's attention. She denied local politics led to a harsher approach. Her instructions were to deal with case as if it were any other. She said there had been no informal approach as these were strict liability offences which had been occurring for a long time. She said she did not think the Government intended informal action when there is significant offending. She did not think it was open to her to consider the peculiar circumstances of the post COVID environment and the use to which the accommodation was being put. She said that if there are a greater number of children, there is a greater risk.

62. Clearly each property was occupied by different numbers of persons, the highest number being 9 when 12 School House Gardens was occupied more extensively before 12 May 2023.
63. As for Removal of Financial Incentive, no party suggested a score of 1-2, so it is necessary to consider the next 2 policy categories:
- Score 2-3: small portfolio landlord (up to 5 properties); managing agents (less than £100k turnover); some financial gain from committing offence;
  - Score 4-5: professional portfolio landlord (5+ properties); professional agents with significant portfolio (£100k turnover).
64. To fit the facts of the above case into one or other of the above bullets presents problems, even accepting the rubric as examples. The Applicant is not a managing agent. The Applicant is not ML, nor ATCGL. The Respondent has decided to penalise the director of ML, not the company. His financial incentive and income cannot be equated to that of the companies, even accounting for his shareholding. *Sutton v Norwich CC* was a different case.
65. Up to 5 properties and 5+ properties means an offender with exactly 5 properties can be both a “small portfolio landlord” and a “professional portfolio landlord”, which is contradictory. The number of properties a landlord has is a very crude yardstick to apply.
66. For all these reasons, there is an element of inflexibility to the Council’s policy which leads us to treat the score in this case with care.
67. The evidence is not clear enough for us to establish, on balance of probability whether the 3 Properties did make a profit, given the loans involved. The Applicant accepted that ML was only allegedly operating at a loss because of the “deemed interest” being paid on certain loans, but only the accountants would be able to explain this. ML’s profits were significant for 2022; but that is as far as one can be clear. The Applicant accepted ML was 5% owned by his wife and 95% by ATCGL, which was 100% owned by him. He did not volunteer any details about his ability to pay the fines imposed. What the occupants were paid as their basic hourly rate has little relevance to the Applicant’s financial incentive.
68. In the Tribunal’s determination, balancing all the above, the factor of Removal of Financial Incentive should be scored at 3 for each of the 6 offences, and not 4.
69. As to Exposure To Risk, it is not all clear that each property was considered individually with the care that it should have been. Whilst there were common factors (breach of HMO standards the same; period of exposure to risk occupants of over a year; similar number of children on inspection; and weight of harm at a score of 3 on a scale of 1-10, which seems to us appropriate) there were obvious differences:

(a) 7 persons (4 adults and 3 children from 2 different households) in 49 Felstead Rd sharing 1 kitchen, WC and shower room;

(b) 5 persons (2 adults and 3 children) in 12 School House Gardens, although there was evidence of 9 person previously before a leak occurred, sharing 1 bathroom and sleeping in the living room;

(c) 4 adults and 2 children in 2 households in 97 Epping New Rd, with reasonable amount of living space, but only 1 bathroom for whole house.

70. It is the Tribunal's determination that 12 School House Gardens posed more of a risk over the period concerned. There were 5 children in occupation when 9 persons occupied. It was most overcrowded, being a 3 bedroom semi. There was a leak.

71. The Tribunal determines that 12 School House Gardens merits a score of 4, and 49 Felstead Rd and 97 Epping New Rd a score of 3 for each of the offences. It would be artificial at this point to distinguish between the s.72 offence and the s.234 offences.

72. Applying the above scores to the uncontested scores for track record and weight of harm (scores of 1 and 3 respectively), this analysis produces the following final scores:

(1) 49 Felstead Rd (s.72):	14
(2) 49 Felstead Rd (s.234):	14
(3) 12 School House Gardens (s.72):	15
(4) 12 School House Gardens: (s.234):	15
(5) 97 Epping New Rd (s.72):	14
(6) 97 Epping New Rd (s.234):	14

73. Using the matrix in Appendix A of the Policy gives the following fines (£):

(1) 49 Felstead Rd (s.72):	14000
(2) 49 Felstead Rd (s.234):	14000
(3) 12 School House Gardens (s.72):	15000
(4) 12 School House Gardens: (s.234):	15000
(5) 97 Epping New Rd (s.72):	14000
(6) 97 Epping New Rd (s.234):	14000

#### *The totality principle*

74. The parties agree the totality principle applies, as they should: see *Shorr & Ro v LB Camden* [2024] UKUT 202 (LC). The Respondent considers there should be no discount. There should be consecutive penalties, it contends. The Applicant considers there should be a discount of about a third.

75. It is important to avoid double counting, we remind ourselves. Having assessed the overall fine (here £86,000) we must consider whether the overall sum is proportionate to the offences committed: see *Shorr* at para 62.

76. In paragraphs 67 to 68 the Upper Tribunal in *Shorr* considered how the Sentencing Council guidelines should be applied to a case where the offender has been convicted of one or more offences. There are examples given, such as no separate penalty for the lesser offences where an offender is to be fined for two or more offences that arose out of the same incident or where there are multiple offences of repetitive kind, especially when committed against same person.
77. On the other hand where an offender is to be fined for two more offences that arose out of different incidents, it will often be appropriate to impose a separate fine for each of the offences; the court should add up the fines and consider if they are just and proportionate; if the aggregate amount is not just and proportionate, the decision-maker should consider whether all of the fines can be proportionately reduced.
78. We also note we should not treat a failure to licence as aggravated by the breach of management regulations (*Shorr*, paragraph 69).
79. In this Tribunal's determination, there were 3 separate properties here, separate victims up the offending, so it is more akin to the second bullet point in paragraph 67 of *Shorr*, even though it is the same circumstances (and state of mind) which led the Applicant and his company to acquire the properties and in failing to licence them.
80. We do not consider it just and proportionate to leave the fine at £86,000, i.e. to impose simple consecutive penalties. We do not consider the reduction should be as much as say two-thirds, as if only 1 property were involved instead of 3. As stated above, there were several victims of this offending and a risk posed to all of them.
81. Applying *Shorr*, we instead consider there should be a just and proportionate reduction of 30% for each fine. Accordingly, we determine on appeal that the appropriate total fine should be £60,200, broken down as follows:

(1) 49 Felstead Rd (s.72):	9,800
(2) 49 Felstead Rd (s.234):	9,800
(3) 12 School House Gardens (s.72):	10500
(4) 12 School House Gardens (s.234):	10500
(5) 97 Epping New Rd (s.72):	9,800
(6) 97 Epping New Rd (s.234):	9,800

## Conclusions

82. The Applicant having been substantially successful, we order the Respondent to reimburse the Applicant the hearing and Tribunal fees of £330.
83. We conclude by thanking the parties for their helpful representations and approach to this case.

**Name:** Tribunal Judge S Evans

**Date:** 22 April 2025.

### **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).



## **Appendix 1**

### **Housing Act 2004**

#### ***30 Offence of failing to comply with Improvement Notice***

(1) Where an Improvement Notice has become operative, the person on whom the Notice was served commits an offence if he fails to comply with it.

(2) For the purposes of this Chapter compliance with an Improvement Notice means, in relation to each hazard, beginning and completing any remedial action specified in the Notice—

(a) (if no appeal is brought against the Notice) not later than the date specified under section 13(2)(e) and within the period specified under section 13(2)(f);

(b) (if an appeal is brought against the Notice and is not withdrawn) not later than such date and within such period as may be fixed by the Tribunal determining the appeal; and

(c) (if an appeal brought against the Notice is withdrawn) not later than the 21st day after the date on which the Notice becomes operative and within the period (beginning on that 21st day) specified in the Notice under section 13(2)(f).

(3) A person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(4) In proceedings against a person for an offence under subsection (1) it is a defence that he had a reasonable excuse for failing to comply with the Notice.

(5) The obligation to take any remedial action specified in the Notice in relation to a hazard continues despite the fact that the period for completion of the action has expired.

(6) In this section any reference to any remedial action specified in a Notice includes a reference to any part of any remedial action which is required to be completed within a particular period specified in the Notice.

(7) See also section 249A (financial penalties as alternative to prosecution for certain housing offences in England).

(8) If a local housing authority has imposed a financial penalty on a person under section 249A in respect of conduct amounting to an offence under this section the person may not be convicted of an offence under this section in respect of the conduct.

## **S.249A Financial penalties for certain housing offences in England**

- (1) The local housing authority may impose a financial penalty on a person if satisfied, beyond reasonable doubt, that the person's conduct amounts to a relevant housing offence in respect of premises in England.
- (2) In this section "*relevant housing offence*" means an offence under—
  - (a) section 30 (failure to comply with Improvement Notice),
  - (b) section 72 (licensing of HMOs),
  - (c) section 95 (licensing of houses under Part 3),
  - (d) section 139(7) (failure to comply with overcrowding Notice), or
  - (e) section 234 (management regulations in respect of HMOs).
- (3) Only one financial penalty under this section may be imposed on a person in respect of the same conduct.
- (4) The amount of a financial penalty imposed under this section is to be determined by the local housing authority, but must not be more than £30,000.
- (5) The local housing authority may not impose a financial penalty in respect of any conduct amounting to a relevant housing offence if—
  - (a) the person has been convicted of the offence in respect of that conduct, or
  - (b) criminal proceedings for the offence have been instituted against the person in respect of the conduct and the proceedings have not been concluded.
- (6) Schedule 13A deals with—
  - (a) the procedure for imposing financial penalties,
  - (b) appeals against financial penalties,
  - (c) enforcement of financial penalties, and
  - (d) guidance in respect of financial penalties.
- (7) The Secretary of State may by regulations make provision about how local housing authorities are to deal with financial penalties recovered.
- (8) The Secretary of State may by regulations amend the amount specified in subsection (4) to reflect changes in the value of money.
- (9) For the purposes of this section a person's conduct includes a failure to act.

### **Schedule 13A**

**1** Before imposing a financial penalty on a person under section 249A the local housing authority must give the person Notice of the authority's proposal to do so (a "Notice of Intent").

**2** (1) The Notice of Intent must be given before the end of the period of 6 months beginning with the first day on which the authority has sufficient evidence of the conduct to which the financial penalty relates.

(2) But if the person is continuing to engage in the conduct on that day, and the conduct continues beyond the end of that day, the Notice of Intent may be given—

(a) at any time when the conduct is continuing, or

(b) within the period of 6 months beginning with the last day on which the conduct occurs.

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

**3** The Notice of Intent must set out—

(a) the amount of the proposed financial penalty,

(b) the reasons for proposing to impose the financial penalty, and

(c) information about the right to make representations under paragraph 4.

**4** (1) A person who is given a Notice of Intent may make written representations to the local housing authority about the proposal to impose a financial penalty.

(2) Any representations must be made within the period of 28 days beginning with the day after that on which the Notice was given ("the period for representations").

**5** After the end of the period for representations the local housing authority must—

(a) decide whether to impose a financial penalty on the person, and

(b) if it decides to impose a financial penalty, decide the amount of the penalty.

**6** If the authority decides to impose a financial penalty on the person, it must give the person a Notice (a "final Notice") imposing that penalty.

**7** The final Notice must require the penalty to be paid within the period of 28 days beginning with the day after that on which the Notice was given.

**8** The final Notice must set out—

(a) the amount of the financial penalty,

(b) the reasons for imposing the penalty,

- (c) information about how to pay the penalty,
- (d) the period for payment of the penalty,
- (e) information about rights of appeal, and
- (f) the consequences of failure to comply with the Notice.

**9** (1) A local housing authority may at any time—

- (a) withdraw a Notice of Intent or final Notice, or
- (b) reduce the amount specified in a Notice of Intent or final Notice.

(2) The power in sub-paragraph (1) is to be exercised by giving Notice in writing to the person to whom the Notice was given.

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

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

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

(3) An appeal under this paragraph—

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

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

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

**11** (1) This paragraph applies if a person fails to pay the whole or any part of a financial penalty which, in accordance with this Schedule, the person is liable to pay.

(2) The local housing authority which imposed the financial penalty may recover the penalty or part on the order of the county court as if it were payable under an order of that court.

(3) In proceedings before the county court for the recovery of a financial penalty or part of a financial penalty, a certificate which is—

- (a) signed by the chief finance officer of the local housing authority which imposed

the penalty, and

(b) states that the amount due has not been received by a date specified in the certificate,

is conclusive evidence of that fact.

(4) A certificate to that effect and purporting to be so signed is to be treated as being so signed unless the contrary is proved.

(5) In this paragraph “*chief finance officer*” has the same meaning as in section 5 of the Local Government and Housing Act 1989.

**12** A local housing authority must have regard to any guidance given by the Secretary of State about the exercise of its functions under this Schedule or section 249A.