FIRST-TIER TRIBUNAL

PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	**:**	**MAN/00CG/HNA/2024/0610 & 0611**
Property	**:**	**86 & 88 Crookesmoor Road, Sheffield S6 3FR**
Applicant	**:**	**Sevenhills Estates Ltd**
Representative	**:**	**Bahadur Khan**
Respondent	**:**	**Sheffield City Council**
Representative		**Ms Saad (Solicitor)**
Type of Application	**:**	**Appeal against a financial penalty – Section 249A & Schedule 13A- Housing Act 2004**
Tribunal Members	**:**	**Tribunal Judge J. E. Oliver** **Tribunal Member J. Gittus**
Date of Determination	**:**	**2nd & 15th July 2025**
Date of Reasons	**:**	**4th August 2025**

DECISION

Decision

1. The Final Notice dated 15th February 2024 is quashed.

Background

2. This is an application by Sevenhills Estates Ltd ("the Applicant"), represented by Bahadur Khan, to appeal a financial penalty of £4,000 issued by Sheffield City Council ('the Council") pursuant to section 249A of the Housing Act 2004 ("the 2004 Act") in respect each of the properties at 86 & 88 Crookesmoor Road, Sheffield, also known as House D and House E the Vestry, Crookesmoor Road, Sheffield ('the Properties"). There is a total penalty of £8000, being the subject of this appeal.
3. The Properties are owned and managed by the Applicant.
4. The Council's involvement began on 17th October 2023 when one of the tenants at House D, the Vestry reported a water leak. Mr McMurdo, a Senior Private Housing Standards Officer inspected House D on 1st and 3rd November 2023 and found it to be occupied by 5 tenants and that qualified as an HMO. When speaking with the tenants of House D, it was found House E was similar in terms of both its layout and occupation. The tenants were students at the University of Sheffield who had signed tenancy agreements in December 2022, to commence in June 2023. However, works to the Properties had taken longer than anticipated such that most of the students did not take occupation until September 2023 and received compensation for this.
5. Mr McMurdo, when checking the Council records, found there was no record of a HMO licence being applied for or granted for the Properties.
6. An inspection of House E was carried out on 22nd November 2023 and was found to be also occupied by 5 students. Their occupation had also been postponed, caused by the delay in the completion of the building works.
7. Mr McMurdo satisfied himself the Properties should be licensed as an HMO and were not and on 13th December 2024 issued a Notice to Impose a Financial Penalty of £8250 for each of the Properties.
8. Mr Khan, a director for the Applicant, made written representations in response to the Notice and each of the penalties was reduced to £4000. A Final Notice of a Financial Penalty was issued on 15th February 2024.
9. The licences for the Properties were issued on 26th March 2024 for the period from 25th January 2024 to 3rd August 2028.
10. The Applicant filed an appeal in respect of the financial penalty and the matter was listed for determination with a hearing and without an inspection on 2nd July 2025. The Tribunal reconvened on 15th July 2025, without the parties, to determine the application.

The Law

11. Section 249A (1) of the 2004 Act provides that "a local 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…"
12. Section 249 (2) sets out what amounts to a housing offence and includes at s.249(2)(b) an offence under s.72(1) of the 2004 Act, namely failing to apply for a licence for an HMO. Section 72(1) states:

    (1) that a person commits an offence if he is a person having control of or managing an HMO which is required to be licensed under this Part (see section 61(1)…,but is not so licensed."

13. Section 72(5) of the 2004 Act provides that a person does not commit the offence if he has a reasonable excuse for failing to comply with this requirement.
14. It is for the Council to prove, beyond reasonable doubt, that an offence has been committed.
15. It is for the Applicant to prove, on the balance of probabilities, that he has a reasonable excuse for failing to apply for a licence.
16. The maximum fine that can be imposed for each offence is £30,000.
17. Paragraph 10(3) of Schedule 13A of the 2004 Act provides that an appeal in respect of a financial penalty is by way of re-hearing.

Procedural requirements

18. Schedule 13A of the 2004 Act sets out the procedural requirements a local authority must follow when seeking to impose a financial penalty. Before imposing such a penalty, the local authority must give a person notice of their intention to do so, by means of a Notice of Intent.
19. A Notice of Intent must be given be given within 6 months of the local authority having sufficient evidence of the conduct to which the financial penalty relates. If the conduct continues beyond that date, then the Notice of Intent may be given at any time when the conduct is continuing or within 6 months of the day when the conduct last occurs.
20. The Notice of Intent must set out:
    - the amount of the proposed financial penalty
    - the reasons for imposing the penalty
    - information about the right to make representations regarding the penalty
21. If representations are to be made, they must be made within 28 days beginning with the day after that on which the Notice of Intent was given. At the end of this period the local authority must then decide whether to impose a financial penalty and, if so, the amount.
22. The Final Notice must set out:
    - the amount of the financial penalty
    - the reasons for imposing the penalty
    - information about how to pay the penalty

- the period for the payment of the penalty
- information about rights of appeal
- the consequences of failure to comply with the notice

Guidance

23. A local authority must have regard to any guidance issued by the Secretary of State relating to the imposition of financial penalties. The Ministry of Housing issued such guidance ("the MHCLG Guidance) in April 2018: *Civil penalties under the Housing and Planning Act 2016-Guidance for Local Authorities*. This requires a local authority to develop their own policy regarding when or if to prosecute or issue a financial penalty.
24. The Council has developed its own guidance, dated 1st May 2024 ("the Sheffield Guidance") that follows the MHCLG Guidance in setting out the criteria to be considered when determining the penalty.
25. When deciding whether to issue a financial penalty or prosecute, the Council will have regard to:

    - Punishment of the offender
    - Deterring the offender from repeating the offence or other housing offences
    - Deterring others from committing similar offences
    - Removing any financial benefit from having committed the offence

26. When considering the likely merits of a punishment in relation to the aims, the Council will take into consideration:

    - The likelihood of being able to recover a financial penalty
    - The effect had by any previous sanctions imposed on that offender
    - The likely impact of a criminal sanction on the offender
    - The conduct of the offender, and anything else which is known about them which may be relevant to the aims (at paragraph 26)

27. The amount of any financial penalty will take into account, but not be limited to, factors such as:

    - The severity of the offence
    - The financial circumstances of the offender
    - Any previous action taken against the offender
    - Whether they ought to have known they were in breach of their legal responsibilities
    - The harm or potential harm to the occupier
    - The deterrence of further offending by the offender in question
    - The deterrent values to others (whilst civil penalties will not generally be in the public domain, unlike prosecutions, it is recognised that other landlords may become aware through informal channels)

- The removal of any financial benefit the offender may have obtained as a result of committing the offence
- Any other aggravating factors including the reaction of the offender to the intervention.

28. The Sheffield Guidance states any financial penalty is determined using culpability, track record and harm factors as set out in the Guidance.
29. Culpability is on three levels, these being high, medium and low:

High level of culpability

A person will be deemed to be highly culpable where the Council are satisfied they intentionally or recklessly breach or wilfully disregard the law. The following are relevant factors:

- are an experienced landlord/agent with a portfolio of properties who would be expected to have known of their responsibilities
- despite a number of opportunities to comply they have failed to comply
- serious breaches and/or systematic failure to comply with their legal duties
- has been significantly obstructive as part of the investigation
- previous history of being prosecuted or served a financial penalty with regard to a housing or tenancy law offence

Medium level of culpability

Where a landlord commits an offence through an act or omission which the Council considers a person exercising reasonable care would not commit. The following are relevant factors:

- the landlord/agent had systems in place to manage risk or comply with their legal duties but they were not sufficient or complied with on this particular occasion
- Landlord with more than one property and should have known their responsibilities
- The breach is significant but not so serious to meet the high level of culpability
- Has been obstructive as part of the investigation
- No history of being prosecuted or served a financial penalty with regard to a housing or tenancy ;law offence (however high criteria points being met)

Low level of culpability

Where a person fails to comply, or commits an offence where:

- No or minimal warning given to offender
- A significant effort has been made to comply but was inadequate in achieving compliance

- The breaches are minor and is an isolated offence
- Landlord with one property and may not have a full understanding of their responsibilities
- No history of being prosecuted or served a financial penalty with regard to a housing or tenancy law offence

30. The same categories apply to harm and the following are given as examples:

High

- Actual serious or potential serious harm to individual(s)
- Serious effect on an individual(s) or widespread impact

Medium

- Adverse effect on an individual
- Moderate risk of harm to an individual(s) or broader impact

Low

- Minimal adverse effect on individual(s)
- Actual low harm or potential low harm on individual(s)

31. Once the appropriate levels have been determined a matrix fixes the level of penalty. The Sheffield Guidance provides examples of aggravating and mitigating factors from which the Council may choose to deviate from the prescribed level of penalty.

32. The aggravating factors are given as follows:

- Previous relevant convictions having regard to the offence to which it relates
- Landlord motivated by financial gain
- Deliberate concealment of the activity/evidence
- Number of items of non-compliance-greater the number the greater the potential aggravating factor
- A record of letting substandard accommodation
- A record of poor management/inadequate management provision
- Vulnerable nature of occupants

33. The mitigating factors are exampled as follows:

- High level of co-operation with the investigation, beyond that which will always be expected
- Any voluntary steps taken to address issues e.g. submits a licence application
- Near complete compliance with regard to the offence i.e. completed 85% of the Improvement Notice

- Acceptance of responsibility e.g. accepts guilt and remorse for the offence(s)
- Mental disorder or learning disability, where linked to the commission of the offence
- Serious medical conditions requiring urgent, intensive or long-term treatment
- Age/and lack of maturity where it affects the responsibility of the offender
- Previous good character and/or exemplary conduct-(good character or exemplary conduct are not evidenced purely by lack of bad character)

34. Paragraph 12 of the Sheffield Guidance continues:

12.1 The statutory guidance advises that a guiding principle of financial penalties is that they should remove any financial benefit that the landlord may have obtained as a result of committing the offence. This means the amount of the financial penalty will normally not be less than what it would have cost to comply with the legislation in the first place.

12.2 the final consideration when setting the level of penalty is therefore, making sure that any financial benefit to the offender of committing the offence is removed, and that as well as being fair and proportionate, the level of the penalty acts as a deterrent.

12.3 When determining any gain as a result of the offence the Council will take into account the following issues:

- *Cost of the works required to comply with the legislation*
- *Any licence fees avoided*
- *Any other factors resulting in financial benefit*

The Hearing/Submissions

35. The Applicant was represented at the hearing by Mr Khan. The Council was represented by Ms Saad, Solicitor. Mr McMurdo and Mr Neil Skinner, a member of the Private Housing Standards team of the Council also attended.

Applicant's Evidence

36. At the outset of the hearing Mr Khan confirmed the Applicant admitted the offence of failing to have a HMO licence for the Properties, but did rely upon having a reasonable defence for those offences.
37. Mr Khan advised the Properties had been converted to comply with HMO standards. The work was to have been completed in February 2023 but was severely delayed. The original timetable would have enabled an application for the licences to be made in sufficient time. In August 2024 the works were sufficiently advanced that the licence application was drafted but could not be filed with the Council since the Applicant had not received the necessary

certificates from the contractor, Atkinsons, to include them with the application.

38. Mr Khan stated that he relied upon the Sheffield Guidance when deciding not to file the application without the certificates.
39. He referred to the application form regarding the requirement for certificates to be provided as follows:

    "*To constitute a valid application, it is a requirement that you provide up-to-date copies (where applicable) of the certificates listed below".*

40. He further believed the licences, when granted, could be backdated and referred to the Sheffield Guidance which stated:

    "Date at which the property became licensable: This should be at the date at which 5 or more people, forming 2 or more households began residing at the property. Where this date is in the past the licence will be backdated".

    It also stated:

    "Where applications are late, the validity of the licence will begin from when the licence should have been issued"

41. Mr Khan referred to another application where he had applied for a licence for 80 Crookesmoor Road that had been issued on 15th May and backdated to 31st January. Further the licences for the Properties had been received and were dated from 25th January 2024 to 3rd August 2028 and so the Council have accepted a commencement date of 4th August 2023, a day before the Properties became licensable.
42. A third point was raised regarding the Sheffield Guidance when it referred to a penalty of £150 being levied if a licence application was more than 2 months late. This conflicted with a financial penalty being imposed, initially in the sum of £16500.
43. It was said there was no intention to avoid payment of the application fees, each in the sum of £750. This cost was minor compared with the cost of the building works in a sum of £500,000.
44. Mr Khan accepted that following his submissions to the Council in response to the penalty, not only had that been reduced, but the Sheffield Guidance had been amended. Those amendments confirmed it was misleading. He had relied upon it but had been punished for doing so.
45. Mr Khan provided a copy of the current application form for a Mandatory HMO, effective from 1st February 2024 and therefore after the application was made for the Properties. The 2024 edition has comprehensive guidance notes. In the section referring to certificates there is notification of the need to provide the certificates but should those not be available then the Council should be contacted "*to discuss the matter further"*. A copy of the application forms for the Properties does not contain the same advice. In the declaration it states:

    "*Note: your application will NOT be valid unless you complete all the relevant parts of this form, provide all necessary documents and pay the required fee"*

46. Upon the issue of backdating, it was Mr Khan's experience that all licences are backdated. He currently has 4 properties where licences have expired. Renewals of licences can only be made within 1 month of expiry, but the Council's website state it will take 16 weeks for a new licence to be issued. When granted the licence it is then backdated; he currently is awaiting licences applied for in April 2024 that will be backdated for more than 1 year.
47. Mr Khan confirmed the Applicant has several HMO licences and he therefore has experience in making applications for them. However, the situation that arose with the Properties has not happened before, hence his reliance upon the information given in the Sheffield Guidance.
48. In evidence, it was confirmed the certificates were finally received around 20th December 2024 and the application for the licences was then made.
49. When questioned why the tenants had been allowed to take occupation of the Properties before the receipt of the certificate, this being a breach of HMO standards, it was confirmed Mr Khan had accepted the assurances given by Atkinsons that the completed works were satisfactory. Mr Khan explained Atkinsons were reliable contractors in whom he had considerable trust. In his evidence to the Tribunal Mr Khan provided copies of the certificates that showed the Fire Detection and Alarm System Certificate and Emergency Lighting Certificate were dated 21st July 2023 and the Electrical Certificate was dated 13th August 2023.
50. Upon the amount of the penalty Mr Khan suggested the Council could have considered a caution rather than imposing a financial penalty. He also queried why the Council had not made any attempt to resolve the issue by informal action. He objected to the finding of high culpability referred to in the Notice of Intention to Impose a Financial Penalty but accepted this had been reduced to medium in the Final Notice.
51. Mr Khan submitted he had an unblemished record of 30 years and the financial penalty had had a devastating effect upon his business. His membership of the SNUG scheme, a scheme setting standards for student housing in Sheffield and allowing him to advertise his properties on the university's website, had been suspended. This not only affects the properties owned by the Applicant but other properties also managed by it.

Council's Evidence

52. The Council referred the Tribunal to **R (Mohamed and another) v London Brough of Waltham Forest [202] EWCH 1083** that states it is not necessary for the Applicant to have known he was committing an offence for a sanction to be imposed.
53. When relying upon the defence of reasonable excuse, the Applicant needs to have a reasonable excuse for continuing to manage and control an HMO without a licence and not a reasonable excuse for not applying for a licence as established in **Palmview Estates Ltd v Thurrock Council [2021] EWCA Civ 187.** Here, Lady Justice Asplin said:

"31. There is no definition of "reasonable excuse" in the 2004 Act. However, it seems to me that the plain meaning of the words used in the sub-section as

a whole and taken in context is that there is a defence, if, viewed objectively, there is a reasonable excuse for having control of or managing an HMO without a licence. It seems to me that it is obvious, therefore, that the reasonable excuse must relate to the activity of controlling or managing the HMO without a licence. It is that activity which is the kerel of the offence in section 72(1)."

She continues:

"*34. However, the offence to which the defence is having a reasonable excuse relates, is not framed in terms of failure to apply for a licence. The prohibited activity is controlling or managing an HMO without a licence The reasonable excuse is framed expressly in terms of the offence itself. It must relate to the prohibited activity. As the UT Judge pointed out at [38] of her decision, not applying for a licence and controlling or managing an HMO without a licence are not the same thing. They are legally concomitant; a person may have a perfectly reasonable excuse for not applying for a licence which does not (everything else being equal) give that person a reasonable excuse to manage or control those premises as an HMO without that licence.*"

"*39. In fact, as the UT Judge pointed out in this case, it is best not to speculate about the circumstances which may be sufficient to amount to a reasonable excuse for the purposes of section 72(5). It is necessary for the FTT to consider all the relevant circumstances when seeking to determine whether the defence is made out and to view the matter objectively. It may be that the reason for failing to apply to apply for a licence does not provide a reasonable excuse for having committed the offence when viewed in the context of all the relevant circumstances of the case. As I have already made clear, the excuse in relation to failure to apply for a* licence *cannot lead, however, as a matter of course, to the conclusion the defence is made out.*"

54. Mr McMurdo stated that when his enquiries regarding the Properties found they did not have the appropriate HMO licences, he determined to issue a civil penalty. His decision to do this arose from the fact the Applicant is an experienced landlord.
55. In response to Mr Khan's evidence of his reliance upon the Sheffield Guidance he accepted that at the time of the offence it was misleading. This was the case for both the requirements to produce the certificates when applying for an HMO licence and upon the matter of backdating the licences. The Sheffield Guidance had since been updated to remove those parts that were misleading. He had obtained copies of the earlier edition and stated:

"*Our consideration was that the Respondent's own guidance was not as clear as it could be and could be construed as being inconsistent with other documentation we had made publicly available. Upon reading Part 2 of the now superseded guidance document … entitled "Part 2-Property Information"-we concluded that although it is stated that the Respondent require up-to-date copies of the relevant certificates, there is a clear instruction to contact the department if the certificates are not available at the time of an application.*"

56. Mr McMurdo then continued upon the issue of back-dating the licences:

    "We went onto consider the statement on page 1 of the Guidance document under the heading "Date at which the property became licensable". In light of the Applicant's representations, it was clear to me that this had been interpreted as meaning that the effect of the backdating would be to provide immunity against any offences arising under section 72 of the Housing Act 2004 which had occurred prior to the application being made. There is no statement contained within the guidance that any offence occurring prior to the application being submitted would be condoned and for example, the implication could be that in circumstances of discovering a breach the Respondent will both levy a fine or issue a summons and backdate the licence."

57. Mr McMurdo submitted that although the Sheffield Guidance was misleading, there was other evidence available elsewhere, for example, on a web page from which the Sheffield Guidance was downloaded that contains a statement a property becomes licensable when occupied by 5 or more people. Whilst that web page was available in 2023, it is no longer available. Reference was also made to the guidance notes, that were available until February 2024, that states "*where it is not possible to supply a certificate with an application you should contact Private Housing Standards ….*"
58. Mr McMurdo confirmed that had the Applicant filed the application without the certificates, there would have been a statutory defence to the current offence. A licence could have been issued subject to the production of the certificates, pursuant to section 67 of the 2004 Act.
59. Mr Skinner confirmed his role within the Council was to check new premises to determine whether they were suitable to be licensed as an HMO and he had carried out this role upon receipt of the applications for the Properties. An inspection was undertaken on 24th January 2024. The start date of the licence was 25th January 2024 and would normally be licensed for 5 years. However, since Mr Khan had confirmed the Properties were licensable from 3rd August 2023 then the 5 years should run from that date. It would otherwise give the Applicant an advantage of having a licence for a greater period than 5 years. The draft licences were sent out on 5th March 2024 giving an expiry date of 3rd August 2028. The actual licences were sent out on 26th March 2024.
60. Upon the issue of the penalty, Mr McMurdo confirmed there had an acceptance the Sheffield Guidance was misleading and the penalty had been significantly reduced when receiving Mr Khan's representations. Culpability had originally been high but was reduced to medium. Harm was at low although Ms Saad for the Council suggested that in the light of the evidence given by Mr Khan, this was now wrong. Mr Khan had admitted he had allowed students to occupy the Properties without having the certificates required for a HMO licence. His reliance upon the assurances of his builders was insufficient and the potential for harm was higher.
61. The Council stated it had incorporated any mitigating factors in determining culpability as medium. There was one aggravating factor applied to both penalties and that was the same offence has been committed for each property.

62. The Final Notice imposing a penalty of £4,000 for each property was calculated as follows:

Culpability/Harm -Medium/Low = £5,000

Aggravating factors- it was a double offence that lead to 2 offences – (+10%)

Mitigating factors-there was a high level of co-operation evidenced by prompt admission of wrong-doing (-10%)
And
Submissions of applications in expedient manner (-20%)

£5,000 + £500 - £1500 = £4,000

Determination

63. The Applicant did not challenge the Council's compliance with the procedural requirements of Schedule 13A of the Act and, from the documents provided, the Tribunal accepted those requirements were met.
64. The imposition of a financial penalty can only be upheld by the Tribunal if it is found, beyond reasonable doubt, the Applicant's conduct amounts to an offence under section 95 of the Act. In ***Opara v Olasemo [2020] UKUT 0096(LC)*** it was said:

"*For a matter to be proved to the criminal standard it must be proved "beyond reasonable doubt"; it does not mean "beyond any doubt at all". At the start of a criminal trial the judge warns the jury not to speculate about evidence they have not heard, but also tells them it is permissible for them to draw inferences from the evidence they accept"*

65. The Tribunal accepted the Applicant has admitted the offence of not having a licence for the Properties at the time they became occupied by 5 students, thus qualifying the Properties as an HMO.
66. There is a defence of reasonable excuse, for which the standard of proof is the balance of probabilities. In ***IR Management Services v Salford [2020] UKUT 0081 (LC)*** the UT observed:

"*The issue of reasonable excuse is one which may arise on the facts of a particular case without an appellant articulating it as a defence (especially where an appellant is unrepresented). Tribunals should consider whether any explanation given by a person … amounts to a reasonable excuse whether or not the appellant refers to the statutory defence."*

67. When considering whether the Applicant had a reasonable excuse for failing to apply for the licences, the Tribunal considered the explanation given by the Applicant for not applying for the licences. It was accepted by the Council the Sheffield Guidance, in effect at the time of the licensing application, had been misleading. Mr McMurdo had confirmed the Sheffield Guidance and licensing application forms had both been amended to rectify their shortcomings. The Tribunal noted the revised application form was much

more informative and provided clearer instructions to any applicant than the form which Mr Khan had completed. The original application form had stated the application must be accompanied by the certificates. The original Sheffield Guidance stated:

"*To constitute a valid application, it is a requirement that you provide up to date copies (where applicable) of the certificates listed below. Where the certificates are not provided, and the Council has to request them then you may be liable to additional charges.*
Please note: *where it is not possible to supply a certificate with the application you should contact Private Housing Standards on ….*"

The Tribunal finds that although the information provided by the Council was misleading, it nevertheless made it clear that any issues regarding the documentation required with the application could be answered by contacting the Private Housing Standards Department. It accepted Mr McMurdo's submission that had that been done, as advised, it is probable a licence could have been issued with conditions. Accordingly, the Tribunal does not find that the Applicant had a reasonable excuse when relying upon this defence.

68. The Tribunal then considered whether there was a defence of reasonable excuse arising from the advice given regarding the Council's ability to backdate the licence. The question is whether it was reasonable for the Applicant to allow the Property to be occupied from 5th August 2023, thus requiring an HMO licence, when it was not so licensed. The Tribunal considered the submissions made by Mr McMurdo that the effect of backdating had been interpreted as providing immunity offences under section 72 of the Act. Whilst the Tribunal accepted this would be the effect of backdating the licence it had not been proved that this was the Applicant's motive when reading and relying upon the Sheffield Guidance.
69. The Tribunal determined the Applicant had a reasonable excuse for allowing the Properties to be operated as an HMO when unlicensed. It had relied upon the Sheffield Guidance in believing that when the licence was granted it would be backdated to the point where a licence was required.
70. The relevant statements upon which Mr Khan relied upon, as referred to in paragraph 40 above, were not qualified in any way, leading a reasonable person to interpret them to mean a licence, when applied for, would be back dated. The Tribunal noted the Council had suggested the Applicant was an experienced landlord and therefore should have known a licence would not be backdated. However, in evidence, Mr Khan explained the Applicant had not found itself in this position before. The Tribunal therefore considered it reasonable for reliance to be places on the Sheffield Guidance which the Council accepts was misleading. The Applicant had a reasonable excuse for allowing the Properties to operate without a licence in the belief that when applied for, it would be backdated to 5th August 2023.
71. The Final Notice dated 15th February 2024 is therefore quashed.