FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**MAN/00DA/HNA/2025/0631 & /0642-0644**
Property	**:**	**FLATS 1 - 4, 1 CRANBROOK AVENUE, LEEDS, LS11 7AX**
Applicant	**:**	**MOHAMMED ABID ZAMAN**
Respondent	**:**	**LEEDS CITY COUNCIL**
Type of Application	**:**	**Appeal against financial penalty: paragraph 10 of Schedule 13A to the Housing Act 2004**
Tribunal Members	**:**	**Tribunal Judge A Davies** **Tribunal Member J Jacobs**
Date of Decision	**:**	**7 October 2025**

DECISION

The final notices to impose a financial penalty in respect of Flats, 1, 2, 3, and 4, 1 Cranbrook Avenue, Leeds pursuant to Part 3 of the Housing Act 2004 are varied so as to apply a financial penalty of £1700 for the failure to obtain a selective licence for each of the flats, total penalty £6800.

REASONS

THE PROPERTY

1. In October 2000 the Applicant bought a three storey end-terrace house known as 1 Cranbrook Avenue, Beeston, Leeds ("the property"). Prior to the Applicant's

ownership the property was converted to 4 residential units as follows: Flat 1 is the ground floor front room. At the relevant time, there was a bathroom on the first floor, at the top of the first flight of stairs. Off the first floor landing there is a one bedroomed flat (Flat 3) and access to Flat 4 which is situated on the first and second floors. Flat 2 is situated at the rear of the building with a separate entrance and has no internal access to the rest of the building. The dwellings in the building have separate electricity meters and are serviced by a single boiler, which is situated in the bathroom. Flats 2, 3 and 4 are self-contained, in that all their amenities are behind their lockable front doors. Flat 1 is not self-contained – it contained, at the relevant time, a kitchen but no bathroom facilities. The occupant used the first floor bathroom.

THE OFFENCES

2. The Respondent local housing authority designated Beeston a selective licensing area with effect from 6 January 2020. The Applicant failed to apply for licences for the residential units in the property.

3. In the course of carrying out routine inspections in the area, Mr Frost, a Housing Standards officer employed by the Respondent, noticed disrepair at the property. He inspected the house by appointment on 19 June 2024 and found it to contain the 4 residential units described at paragraph 1 above. The Applicant confirmed that none of the units were licensed under the selective licensing scheme and that in fact no licence of any sort had been issued in respect of the property.

4. The Applicant applied, between 4 and 15 July 2024, for licences under the selective licence scheme for all 4 units in the property. However by that time Mr Frost was coming to the conclusion that Flat 1 could be subject to a Prohibition Order. The licence application for Flat 1 was returned along with the fee.

5. The Respondent concluded that 4 offences had been committed under section 95 of the Housing Act 2004 ("the Act"), namely failure to obtain a selective licence for each of the residential units between 6 January 2020 and June 2024. Notices of intent to impose a financial penalty for each offence were sent to the Applicant on 18 December 2024.

APPEAL AGAINST FINANCIAL PENALTIES

6. The Applicant sent representations to the Respondent on 3 February and filed an appeal against the financial penalties on 12 February 2025. The Respondent served final financial penalty notices on 18 February 2025, requiring the Applicant to pay a fine of £3117 for each of the four residential units in the property. The penalties were subsequently reviewed, and prior to the hearing they were reduced to £2125 per unit (total £8500). In each case the penalty reflected the Respondent's assessment that the level of culpability was low, and that the level of harm caused was also low. This gave a starting point of £2500. 5% was added to this for an aggravating factor, namely the Applicant's membership of an accredited scheme – in this case the Leeds Rental Standard – on the ground that membership of such a scheme should have alerted the Applicant to the requirement for a selective licence. 5% reductions were applied for each of four mitigating factors: (1) cooperation with the investigation, (2) prompt application for selective licences once the failure was notified to the Applicant, (3) acceptance of responsibility and (4) lack of previous convictions. Overall, the financial penalty was reduced by 15% for each flat, giving a figure of £2125.

INSPECTION

7. The Tribunal were accompanied on the inspection by the Applicant and, for the Respondent, Ms Vodanovic of counsel, the Respondent's solicitor Ms Lloyd-Henry, Mr Frost and an observer, Ms Giles. Two of the Applicant's tenants were also present.

8. At the time of the inspection the Applicant was in the course of carrying out alterations to the property. The bathroom on the first floor landing was to be replaced by a kitchen, and there was a proposal to remove the kitchen from Flat 2, leaving the tenant of that flat to share the new kitchen with the tenant of Flat 1. A shower-room had been installed in Flat 1. The Tribunal was not concerned with any of these alterations, the issue to be determined being whether the Applicant was liable for one or more financial penalties for the period from January 2020 to June 2024 inclusive.

THE LAW

9. Part 3 of the Act (sections 79 to 99) deals with selective licensing of rented residential properties.

10. Section 79(2) provides that a house is a Part 3 house if

"(a) it is in any area that is for the time being designated under section 80 as subject to selective licensing, and

(a) the whole of it is occupied either –

(i) under a single tenancy or licence that is not an exempt tenancy or licence under subsection (3) or (4), or

(ii) under two or more tenancies or licences in respect of different dwellings contained in it, none of which is an exempt tenancy or licence under subsection (3) or (4)."

Subsections (3) and (4) do not apply to the tenancies in the property.

11. Section 85(1)(a) of the Act identifies properties which are exempt from the selective licensing provisions, and reads, so far as relevant:

"Every Part 3 house must be licensed under this Part unless –

(a) it is an HMO to which Part 2 applies (see section 55(2));"

12. "Dwelling" and "house" for the purposes of Part 3 are defined at section 99 of the Act as follows:

""dwelling" means a building or part of a building occupied or intended to be occupied as a separate dwelling;

"house" means a building or part of a building consisting of one or more dwellings;

and references to a house include (where the context permits) any yard, garden, outhouses and appurtenances belonging to, or usually enjoyed with, it (or any part of it)."

13. Section 254(4) of the Act reads:

"A building or a part of a building meets the converted building test if –

(a) it is a converted building;

(b) it contains one or more units of living accommodation that do not consist of a self-contained flat or flats (whether or not it also contains any such flat or flats);

(c) the living accommodation is occupied by persons who do not form a single household;
(d) the living accommodation is occupied by those persons as their only or main residence or they are to be treated as so occupying it;
(e) their occupation of the living accommodation constitutes the only use of that accommodation; and
(f) rents are payable or other consideration is to be provided in respect of at least on e of those persons' occupation of the living accommodation."

14. An HMO to which Part 2 applies is described at section 55(2) of the Act as *either* any HMO which is described in the Licensing of HMOs (Prescribed Descriptions) (England) Order 2006 ("the Prescribed Descriptions Order") *or* an HMO within an area designated by the local housing authority as subject to additional licensing.

15. Section 249A of the Act enables a local housing authority to impose a financial penalty on the manager of a let property where it is satisfied beyond reasonable doubt that a housing offence has been committed. "Housing offence" includes among other offences failure to obtain a licence for a property which is required to be licensed under the local housing authority's selective licence scheme contrary to section 95. The imposition of a financial penalty is an alternative to prosecution.

16. The level of financial penalty must be calculated in accordance with the housing authority's published policy, which itself must comply with government guidelines. Schedule 13A to the Act governs the procedure for imposition of a financial penalty, and allows for an appeal to this Tribunal.

17. On appeal the Tribunal is to re-hear the Respondent's decision but may take into account matters which were existing when the financial penalty was calculated but of which the local authority was unaware at the time. The Tribunal may confirm, vary or cancel the final notice imposing the penalty (paragraph 10(4) of Schedule 13A). In reaching its decision, the Tribunal must generally assess the financial penalty in accordance with the policy of the local authority.

18. The overall intention of the powers given to local authorities to impose financial penalties under the Act is stated to be: (1) punishment of the offender (2) deterring

the offender from re-offending (3) deterring others from committing similar offences and (4) removing any financial benefit obtained by the offender from committing the offence.

THE HEARING

19. At the hearing following inspection of the property the Applicant was unrepresented and the Respondent was represented by Ms Vodanovic of counsel. The Tribunal had the benefit of the parties' hearing bundles. Mr Frost was present to give evidence in accordance with his witness statements on behalf of the Respondent.

THE APPLICANT'S CASE

20. The Applicant told the Tribunal that he had been unaware of the selective licensing scheme introduced in the Beeston area of Leeds. 1 Cranbrook Avenue was the only property he owned in the city, and he had not seen any publicity regarding the Respondent's proposal to introduce the scheme in January 2020. He helpfully admitted that this would not amount to a defence of reasonable excuse.

21. The Applicant argued that the house was a section 254(4) HMO. He referred to "a regulatory gap" or lacuna which on a correct reading of the Act resulted in the property being exempt from the provisions of Part 3 of the Act and that consequently the four residential units in it were not caught by the Respondent's selective licensing scheme. He further said that if there had been an offence, it had been failure to licence the HMO, in which case he should be subject to one financial penalty rather than four.

22. In discussions regarding the bathroom on the first floor landing, which was the only bathroom available to the occupant of Flat 1, the Applicant said that there was no external lock on the door (as noted by Mr Frost on his inspection) because the bathroom was not for the exclusive use of Flat 1. He said that although he himself had not seen other tenants or visitors to the property use the bathroom, he understood that they did so. Flats 2, 3 and 4 contain shower rooms but not baths. Further, any of the tenants in the house had access to that bathroom in order to adjust the boiler which was situated in there, and which served the whole house.

23. Mr Zaman referred to the tenancy agreements he had issued to his tenants in the property, which under the heading "Shared Facilities" stated "You are also entitled to use and access the following shared facilities and common parts of the Property while you let the Room:" No description of facilities or common parts are inserted after this wording. Mr Zaman was unable to explain this omission, but said that along with other common parts the bathroom which also served as the boiler room was intended to be accessed by all the tenants without their having to seek permission from the tenant of Flat 1. This was why the tenant of Flat 1 was not able to lock the bathroom and retain it for his sole use.

24. Mr Zaman also argued that it was contradictory and unreasonable for the Respondent to impose a financial penalty for unlicensed residential use of Flat 1 when a Prohibition Order (which was under appeal) had been served, prohibiting residential use of that room.

25. Addressing the amount of the financial penalty, Mr Zaman acknowledged that the penalty had been assessed at a low rate on the basis of the Respondent's published civil penalty matrix. However he told the Tribunal that his financial circumstances, and specifically his dependence on rentals, had not been taken into account, and that the Respondent could and should have made a further reduction on considering the totality principle referred to in its published Civil Penalty Policy, which reads as follows:

> "The council should add up the civil penalties for each offence and consider if they are just and proportionate overall.
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> If the aggregate total is not just and proportionate the council should consider how to reach a just and proportionate aggregated civil penalty. There are a number of ways in which this can be achieved.
>
> For example:
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> • where an offender is to be penalised for two or more offences that arose out of the same incident or where there are multiple offences of a repetitive kind, especially when committed against the same person, it will often be appropriate to impose a civil penalty for the most serious offence. This should reflect the totality of the offending where this can be achieved within the maximum penalty for that offence. In this case no separate penalty should be imposed for the other lesser offences

• where an offender is to be penalised for two or more offences that arose out of different incidents, it will often be appropriate to impose separate civil penalties for each of the offences. The council should add up the civil penalties for each offence and consider if they are just and proportionate. If the aggregate amount is not just and proportionate the Council should consider whether all of the civil penalties can be proportionately reduced. Separate civil penalties should then be imposed

THE RESPONDENT'S CASE

26. For the Respondent, Ms Vodanovic said that whether or not the bathroom was shared, each of the flats in 1 Cranbrook Avenue was a Part 3 house as defined at section 99 of the Act. Consequently each of the four dwellings was subject to the Respondent's selective licensing scheme and required a licence for a period of 5 years from 6 January 2020. The selective licensing provisions applied to every "house" in the property whether or not the property itself was an HMO as defined at section 254(4) of the Act.

27. Mr Frost told the Tribunal that he was unfamiliar with HMO designations, but that the Respondent's policy was to exclude from the selective licensing scheme houses in which there were appreciable levels of communal living. This exemption, for example, would apply to student-type houses where occupants had their own bedroom or bedsitting room but shared a kitchen and/or living room. It did not, he said, apply to 1 Cranbrook Avenue.

28. Regarding the amount of the financial penalties, Mr Frost referred to the reductions he had made as late as September 2025 to reach the final penalty of £2125 per flat. He confirmed that no further reduction had been made under the totality principle, since the overall figure was considered to be reasonable and proportionate in the circumstances. Ms Vodanovic also submitted that these were four separate offences to which individual penalties should be applied for consistency and uniformity.

FINDINGS

29. The Tribunal has taken careful note of the representations of both parties in writing and at the hearing, and has read all the supporting documentation supplied in accordance with the directions order.

30. The legislation is complex for a non-lawyer to follow, and landlords should for that

reason take care to obtain legal and practical advice either via landlord accredited bodies such as the Leeds Rental Standard or NRLA or otherwise. There is no lacuna in the legislation which would have the effect of releasing 1 Cranbrook Avenue and the four residential units in it from the selective licensing provisions in Part 3 of the Act.

31. The Respondent has produced unchallenged evidence of the considerable efforts made in 2019 to publicise and consult on the proposal to designate Beeston a selective licensing area. The Tribunal finds that publication of the intended scheme was sufficient to meet the Respondent's obligations under section 83(2) of the Act.

32. The property is not a Part 2 HMO, ie an HMO defined for the purpose of section 55(2)(a) of the Act by article 4 of the Prescribed Descriptions Order. The Beeston area of Leeds is not subject to additional HMO licensing under section 56 in Part 2 of the Act, and so the property is not an HMO described at section 55(2)(b) of the Act. It follows that 1 Cranbrook Avenue is not included in the selective licensing exemption contained at section 85(1)(a) of the Act.

33. The Tribunal finds on a balance of probabilities that the bathroom on the first floor landing was a shared facility in the house, because the tenant of Flat 1 had no exclusive possession of it and could not prevent other tenants, or visitors to the house, from using it either to access the boiler or as a bathroom. His permission was not required for such use by third parties.

34. The Tribunal has carefully considered the Applicant's argument that the shared bathroom defines 1 Cranbrook Avenue as a licensable HMO and removes the property from the selective licensing scheme. Guidance is given in *Q Studios (Stoke) RTM v Premier Ground Rents No. 6 Ltd* [2020] UKUT 197 (LC) in which The Hon. Mr Justice Fancourt considered the definition of "dwelling" at section 112(1) of the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act"). The definition there reads: "a building or part of a building occupied or intended to be occupied as a separate dwelling" – ie the wording of the definition is the same as at section 99 of the Act. After considering previous case law, the judge says at paragraph 86:
"…. there is in my judgment a clear factual distinction between a case where each separate unit comprises all the usual facilities required for residential living and no further living accommodation is provided for use by occupiers, on the one hand, and a

case where the separate set of premises lacks certain living accommodation that is provided elsewhere, on a shared basis, on the other hand. What is in any given case living accommodation for shared use by more than one occupier, as compared with communal facilities of a building provided for all occupiers to use, will be a question of fact and degree. *For this purpose, as under the Rent Acts, bathroom accommodation is not treated as "living accommodation" but a lounge area and a kitchen are.* Only shared living accommodation will suffice to prevent a separate set of premises constructed or adapted for use for residential purposes from being premises constructed or adapted for use for the purposes of a separate dwelling, within the meaning of [Part 2 of the 2002 Act.]" (Emphasis added). The Tribunal has no basis on which to reach a different conclusion and therefore determines that in terms of the selective licensing provisions in Part 2 of the Act a residential unit such as Flat 1 which includes kitchen facilities but uses a shared bathroom is nevertheless a house occupied as a separate dwelling within the definition at section 99 of the Act.

35. It follows that each of the four residential units at 1 Cranbrook Avenue was subject to selective licensing and that financial penalties for failure to licence the flats have been properly imposed by the Respondent.

36. A selective licence should have been in place for Flat 1 throughout the four and a half years ending with service of the Prohibition Order, during which period Flat 1 was occupied by a tenant and the Applicant was in receipt of rent for it. The Respondent has been neither unreasonable nor contradictory in imposing a financial penalty in respect of the Applicant's failure to obtain a licence for Flat 1 during that period, when its use as a residential unit was not prohibited.

37. The Tribunal assesses the amount of each financial penalty in accordance with the Respondent's published policies as follows. Culpability and harm are both assessed at "low" leading to a starting figure of £2500. To this is added 5% for the Applicant's failure to ensure that he was kept abreast of developments in the private rented sector in Leeds. 5% is reduced for each of the four mitigating factors acknowledged by the Respondent: (1) cooperation with the investigation, (2) prompt application for selective licences once the failure was notified to the Applicant, (3) acceptance of responsibility and (4) lack of previous convictions.

38. The resulting penalty of £2125 is further reduced by 20% after applying the Respondent's totality principle. The Applicant's failure to obtain the selective licences required for 1 Cranbrook Avenue should be regarded as a single failure rather than four separate decisions or omissions. Therefore the case falls to be reassessed by reference to the totality principle. The final financial penalty, calculated to reach a just and proportional aggregate, is £1700 per flat.

39. The Tribunal has considered whether the Applicant's financial circumstances should be taken into account. No financial information was supplied by the Applicant save for a profit and loss account indicating loan payments of over £35000 in the year. Mr Zaman explained to the Tribunal that this represented mortgage payments, and that approximately one third of them was attributable to 1 Cranbrook Avenue. The Tribunal concluded that there was insufficient evidence of the Applicant's financial circumstances to affect their decision as to the level of the financial penalties.