FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case references	:	**(1) CAM/26UB/HMK/2025/0623 and** **(2) CAM/26UB/HMK/2025/0626**
Property	:	**60 Raglan Avenue, Waltham Cross, EN8 8DA**
Applicants	:	**(1) Mr R. Enikhataman** **(2) Mrs N. Aung**
Respondents	:	**(1) Aarav Patel Estate Ltd** **(2) Mr B. Patel**
Type of application	:	**Application by tenant for rent repayment order – Section 41 of the Housing and Planning Act 2016**
Tribunal members	:	**Judge M. Hunt** **Mr G. Smith MRICS**
Date of hearing	:	**1 June 2026 (remote hearing)**
Date of decision	:	**1 June 2026**

DECISION

1. The applications for rent repayment orders are dismissed.

REASONS

Introduction

1. The Applicants rented separate rooms at 60 Raglan Avenue, Waltham Cross EN8 8DA (the "Property") from the Respondent(s) from February 2025 pursuant to separate assured shorthold tenancy agreements. They still live at the Property.

2. On 24 August 2025 and 17 November 2025 respectively, the Applicants applied to this Tribunal for rent repayment orders in accordance with section 41 of the Housing and Planning Act 2016. They assert that the Respondents had committed an offence throughout their tenancies up until 2 December 2025 by failing to license the Property as a house in multiple occupation ("HMO").

3. The Respondents accept that the Property was an HMO but submit that it was occupied permanently only by 4 people, such that it did not need to be licensed.

4. In reaching its decision, the Tribunal considered 3 files of documents provided by the parties together with a selection of further documents provided at the hearing, of most note text and WhatsApp messages, some limited email correspondence between the Respondent(s) and Broxbourne Borough Council and a floor plan of the Property.

5. The Tribunal heard from all of the parties and a further tenant of the Property called as a witness by the Respondents – Mr C. Saif Ullah. The Tribunal was grateful to all for their preparation of the papers and their assistance at the hearing.

6. At the outset of the hearing, the Tribunal only invited submissions and evidence on the matter of whether the Property was at any point occupied permanently by 5 or more individuals such that it required a license. If so, whether an offence was ever being committed. This was the principal dispute. If the response was "no" to either or both issues, there would be no need to hear submissions and evidence on the parties' conduct, the rent paid and any other matters relevant to the making and amount of a rent repayment order. The Tribunal announced at the hearing its decision that it was not satisfied beyond reasonable doubt that the Property had been so occupied and dismissed the applications accordingly. I will outline the relevant law, facts, issues and then the Tribunal's conclusions explaining why it arrived at its decision. As the applications have been dismissed, there was no need to determine who should be considered the appropriate "landlord" for the purpose of any rent

repayment order. As there was therefore no material distinction to be made between the two Respondents, the Tribunal will simply refer to the "Respondent" as being Mr Patel from now on.

Relevant Law

7. Section 61 of the Housing Act 2004 requires that relevant HMOs are to be licensed by the local housing authority.

8. The definition of an HMO is found in sections 254 to 259 of the Housing Act 2004. So far as relevant, section 254 provides a "standard test" for an HMO. An HMO is a building that contains one of more rented units of living accommodation that are not self-contained flats, which is occupied by at least three people from separate households as their only or main residence, and in which the occupiers share one or more basic amenities. There was no dispute the Property was an HMO.

9. The Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018 provides that only HMOs occupied by five or more people are subject to "mandatory" licensing pursuant to section 61 of the Housing Act 2004.

10. Section 72 of the Housing Act 2004 is as follows, so far as is relevant.

    "***72 Offences in relation to licensing of HMOs***

    > *(1) 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.*
    >
    > ...
    >
    > *(5) In proceedings against a person for an offence under subsection (1), (2) or (3) it is a defence that he had a reasonable excuse–*
    >
    > > *(a) for having control of or managing the house in the circumstances mentioned in subsection (1)*".

11. Section 263 of the Housing Act 2004 provides a definition of "person having control" and "person managing", which would include the Respondent.

12. Section 40 of the Housing and Planning Act 2016 provides that this Tribunal can make a "rent repayment order" – an order requiring a landlord to repay an amount of rent paid by a tenant – where the landlord has committed an offence under section 72(1) of the Housing Act 2004.

13. Section 43(1) of the Housing and Planning Act 2016 is as follows.

“***43 Making of rent repayment order***

(1) The First-tier Tribunal may make a rent repayment order if satisfied, beyond reasonable doubt, that a landlord has committed an offence to which this Chapter applies (whether or not the landlord has been convicted)”.

14. Section 44 of the Housing and Planning Act 2016 provides that the amount of rent to be repaid must relate to a period, not exceeding 12 months, during which the landlord was committing the offence. Also, it must not exceed the rent that was paid in respect of that period, excluding any relevant award of benefit. Further, it provides as follows:

“*(4) In determining the amount* [of the rent repayment order] *the tribunal must, in particular, take into account–*

(a) the conduct of the landlord and the tenant,

(b) the financial circumstances of the landlord, and

(c) whether the landlord has at any time been convicted of an offence to which this Chapter applies” [not applicable in this case].

Main Issues

15. The main issues for the Tribunal to determine were as follows.
    1. Whether the Property was an HMO that required a licence.
    2. Whether the Tribunal was satisfied beyond reasonable doubt that the Respondent had committed an offence at all relevant times, including considering whether he had a reasonable excuse for not having licensed the Property.
    3. If so, whether the Tribunal should make a rent repayment order.
    4. If so, in what amount, taking account of the rent paid, the parties’ conduct and the financial circumstances of the Respondent.

16. Ultimately, it only needed to determine the first issue, but it considered also the second and third to an extent.

Facts

17. The main disputed fact between the parties was whether the Property was occupied as their sole or main residence by only 4 people (as contended by the Respondent) or 5 or more people (as contended by the Applicants). The Tribunal was tasked with determining whether an offence was being committed. Therefore, in accordance with section 43 of the Housing and Planning Act 2016, to succeed with their applications the Applicants had to prove their contention beyond reasonable doubt. This finding turned entirely on the residential status of 2 individuals. Firstly, Mrs Aung's husband. Secondly, the wife of the Respondent's witness – Mr Saif Ullah.

18. Few, if any, other matters were in dispute so far as relevant to the Tribunal's decision. On its face, the witnesses' evidence would necessarily have been contradictory. However, on analysis, that was not so. This is because all agreed that both Mr Aung and Mr Saif Ullah's wife regularly stayed at the Property. The only dispute was whether the extent of their respective occupation amounted to the Property being their sole or main residence. This is not always an easy question to answer and invariably involves a degree of interpretation. The Tribunal heard what the witnesses had to say about it and considered that all gave relatively straightforward and consistent accounts. None were obviously seeking to mislead the Tribunal or were being demonstrably evasive. In fact, Mr Saif Ullah was notified only on the morning of the hearing by the Respondent that it would be helpful if he could attend to answer questions. He made time to do so during his lunch break. He had no obvious access to the relevant documents or any chance to prepare answers in advance but gave full and frank responses to all questions posed. He could not explain certain matters – such as why his wife was included on the Property's WhatsApp group – but did not ultimately attempt to deny she had been after initially (and without access to the relevant evidence) refuting that. This is not to say that the Respondent or his witness were necessarily telling the truth, just that the Tribunal had no real basis to safely conclude that they were not.

19. The nature of the Tribunal's task in this case was not to make general findings of fact. It was to focus very much on whether the Applicants were able to establish, beyond reasonable doubt, that 5 or more people had been living at the Property at any relevant time. It will nevertheless help to provide some background facts, based primarily on the Respondent's account, most of which was unchallenged and/or not especially relevant.

20. The Property had been a family home that the Respondent had converted in or around late-2024 and/or early-2025 into an HMO with 4 bedrooms. They were all ready to be (and were) let in February 2025. The largest was on the second floor, which was a converted loft space. This was occupied at all relevant times by Mr Saif Ullah and was known as "Room 4". There were 2 bedrooms on the first floor. Mrs

Aung rented “Room 2”, which was the second largest room, benefitting from the exclusive use of a separate bathroom, which was previously the family bathroom. “Room 3” contained an “en suite” bathroom, slightly smaller than the separate bathroom benefitting Room 2. On the ground floor, “Room 1” was of a similar size to Room 2, containing a similarly-sized “en suite” bathroom. It was occupied at all relevant times by Mr Enikhataman.

21. From different dates around mid-February 2025, the Respondent let out all of the rooms pursuant to assured shorthold tenancy agreements. Each of the written agreements was expressed to have been entered into by a sole individual tenant. Rooms 1 (Mr Enikhataman’s) and 3 were let for £950 per month. Room 2 (Mrs Aung’s) was let for £1,050 per month. Room 4 (Mr Saif Ullah’s) was let for £1,150 per month.

22. The Respondent was aware that, in relation to Rooms 2 and 4, the proposed occupants were both married and expected their partners to stay at the Property for periods of time. The facts relevant to each of these Rooms differs, so I will detail them separately in due course. Before doing so, I note that the Respondent was aware of HMO licensing requirements prior to renting the Property. He submitted that he had ensured the Property complied physically with them. After reviewing Broxbourne Borough Council’s (the “Council’s”) policies, the Respondent said that he knew that an HMO licence would not be required if the Property was permanently occupied by only 4 people. As he only intended to rent the Property to 4 people, he determined not to apply for an HMO licence.

23. On 21 August 2025, the Council had sought clarification from the Respondent of the number of residents at the Property. He responded to say there were 4. After seeking confirmation concerning Mr Aung and Mr Saif Ullah’s wife, the Respondent explained they had never been permanent occupants. The Council accepted this statement on 8 September 2025.

24. Circumstances changed in October 2025. The Respondent had been informed by the Council on 22 October 2025 that it now believed that 5 people resided at the Property (referring to Mr Saif Ullah’s wife as the fifth person), at least with effect from 21 October 2025, when it conducted an inspection further to a complaint raised by Mr Enikhataman. The Council asked the Respondent to apply for an HMO licence by 31 October 2025. The Respondent responded the next day to explain his ongoing belief that the Property was permanently occupied by no more than 4 people, again referring to Mr Saif Ullah’s wife as a temporary occupier. The Council told the Respondent on 30 October 2025 that she had informed it that she lived permanently at the Property. The Respondent immediately responded to say that she may have

been misunderstood and maintained that he believed she did not live there. However, he offered to apply for an HMO licence "as a precautionary measure" if the Council confirmed it was truly necessary. On 11 November 2025, the Council confirmed that an application was required. On 15 November 2025, the Respondent committed to doing so but did not wish that act to be taken as his acceptance that the Property was in law a licensable HMO as he continued to believe that it was not. He asked the Council to confirm that it would not view his application in that way. The Council reiterated the Property was an HMO requiring a licence and that an application should be made by 3 December 2025. After a further exchange with the same outcome, the Respondent determined to make the application. He did so on 2 December 2025, stating that the Property was occupied by 4 people. The Council informed him the application was invalid as it needed to refer to 5 people. The Respondent re-submitted it the next day and he was subsequently granted the requested licence. The Respondent explained at the hearing that he had realised he was making no progress with the Council and that it would be more straightforward and less hassle to simply make the application for an HMO licence. In parallel, the occupant of Room 3 had given notice of their intention to vacate the Property and the Applicants had stopped paying rent. The Respondent was therefore actively considering increasing the number of residents at the Property to 5 in any event to maximise rental income, which also justified making the application.

Room 2

25. In relation to Room 2, the Tribunal was provided with text messages and WhatsApp exchanges about Mr Aung's occupation. The text messages from 30 January 2025 began with Mrs Aung giving her name and employment details and stating in respect of her husband "He is not staying here permanently and he get paid with USD. Then he works with contract as a seaman. Ship mechanic". She then gave his name and employment details. The Respondent replied "I have spoken to my dad and he said we are happy with you as tenants". They agreed a rent of £1,050. The same day, Mrs Aung and the Respondent also corresponded by WhatsApp. The Respondent began by writing "As I know your a couple I can't now do single person rent". Mrs Aung replied "I agreeded. I said if he go back permanently in future". The previously agreed rent of £1,050 was confirmed and the Respondent asked for bank statements from both Mr and Mrs Aung. Mrs Aung responded "As I said he worked with contract, can't get bank statement like me. He doesn't work in the UK at the moment". The Respondent replied "I don't want anything from him Only your documents Contract will be only your name".

26. Mrs Aung said that she lived with her husband at the Property from the time the tenancy began in February 2025 until April 2025, when they separated and he moved out.

Room 4

27. The Tribunal was not provided with any correspondence from the time the tenancy of Room 4 was agreed. However, it was informed at the hearing by both the Respondent and Mr Saif Ullah that their agreement was that the latter's wife would be staying at the Property regularly, mostly over weekends and holidays, but would permanently reside with her family in East London.

28. Mr Saif Ullah accepted that at the start of the tenancy, she stayed at the Property most of the time to help him to settle in. She cooked for him, including preparing meals she would then freeze for him to use later. He insisted however that she did not live at the Property but resided permanently with her family in East London, including because she had care needs.

29. The Applicants say that from the start of their tenancies, they encountered Mr Saif Ullah's wife daily and that this must mean she was in fact living at the Property.

30. Within a few weeks, in late April 2025, the parties agree that she went abroad for almost 6 months. This was confirmed by copies of aeroplane boarding passes and passport stamps. The Applicants considered that to be a "holiday". Mr Saif Ullah said it was for hospital treatment in Pakistan and subsequent recovery. She returned to the United Kingdom on 12 October 2025.

31. Mr Saif Ullah said that she again spent time at the Property but continued to live at, and was primarily based at, her family home in East London. She registered for a National Insurance number in October 2025, providing her family's address in East London. At around the same time, she registered to vote at the Property. Mr Saif Ullah said that, as she had secured a job at the Westfield Shopping Centre in Stratford for the Christmas period, she stayed very much with her family until 31 December 2025. Starting in January 2026, he said that she secured employment in Barnet, so began to live permanently at the Property. This was agreed with the Respondent. Mr Saif Ullah's wife was then named as tenant in a new tenancy agreement entered into upon the expiry of the existing agreement in February 2026.

Conclusions

Issue 1: was the Property an unlicensed HMO?

32. As explained above, this issue revolves around whether the Applicants have proven, beyond reasonable doubt, that 5 or more people were living at the Property at any point up until 3 December 2025 when the Respondent made a valid application for an HMO licence.

33. The Tribunal concluded they had not. Certainly some factors suggested that might have been the case, particularly for the period February to April 2025 and again from 12 October 2025 onwards. In the first period, arguably Mr Aung may have been living at the Property (whether or not alongside Mr Saif Ullah's wife). Mrs Aung was clearly best-placed to provide evidence of that. In relation to the second period, the Council had clearly formed the view, purportedly upon Mr Saif Ullah's wife's own account, that she was living there with effect from at least 21 October 2025. Were the Tribunal determining the matter "on the balance of probabilities", it may even have concluded it was more likely that one or other had been resident at the Property. However, making a finding that the Respondent had committed a criminal offence is a serious matter, and quite rightly subject to a greater degree of scrutiny. In relation to Mr Aung, sufficient doubt was shed on the matter by Mrs Aung's messages with the Respondent about her husband's absence abroad and the nature of his work. In relation to Mr Saif Ullah's wife, he gave a consistent account with the Respondent of his wife's status. She was abroad for around 6 months from April to October 2025, which is hardly indicative of a settled residence at the Property. Not even ten days after her return to the United Kingdom, she was asked by the Council about her residency, after business hours, in precise circumstances about which the Tribunal had no real evidence, save that her grasp of English was not perfect. The Tribunal ultimately concluded there was quite considerable doubt about whether she was genuinely living at the Property at any point prior to January 2026.

34. The Applicants presented some objective evidence to support their case, but the Tribunal found it insufficient. That Mr Saif Ullah's wife had done his laundry and cooked for him could be explained just as easily by regular visits than permanent occupation. The Applicants were unlikely to have been physically in the Property all of the time such as to monitor her every movement. That she received some correspondence at the Property was not a clear indication of residence, likewise her being registered to vote at the Property. The Respondent had always expected she would be staying for periods at the Property, so there was a clear reason why she would have been included on the Property's WhatsApp group. The references the Respondent made to a "couple's rate" and Mrs Aung being one of two "tenants", preceded further exchanges where Mr Aung was stated to be abroad both regularly for extended periods of work and at that specific time. There was nothing inherently unusual about different rents for different Rooms, especially when Room 4 was by

far the largest and Room 2 benefitted from a separate and larger bathroom. The Tribunal did not believe that it could glean from the differential that any "couple's rates" had even arguably been applied. That the Respondent agreed to reduce Mrs Aung's rent by £75 per month some time after her separation could just as easily have been due to a sensible negotiation with an established and respectful tenant who had suffered a significant change in circumstances, as submitted by the Respondent, then any recognition of a "couple's rate" having been previously demanded.

35. Accordingly, the Tribunal was not satisfied the core elements of the offence were made out beyond reasonable doubt, notably that the Property had at any relevant point been occupied by 5 or more people as their only or main residence.

Issue 2: was an offence committed?

36. In light of the finding above, it was not strictly necessary to address any other issues. Nevertheless, the Tribunal had considered whether the Respondent may have had a "reasonable excuse" for failing to licence the Property, even if the Property had in fact been a licensable HMO. If he did, he would have committed no offence.

37. The Tribunal concluded that, even if Mr Aung had resided at the Property (or should be considered to have done so, for instance even when at sea) until April 2025, it concluded that the Respondent would have had a reasonable excuse for not seeking an HMO licence. This is because it was perfectly reasonable for him to have believed he was not resident at the Property. His wife had explicitly stated as such and indicated that he was mostly based abroad and did not even hold a British bank account. Even if he had stayed at the Property for a number of weeks, this would not have materially affected the Tribunal's analysis.

38. Largely the same considerations apply to Mr Saif Ullah's wife. The Respondent was informed she would not be living at the Property and within a few weeks of the start of Mr Saif Ullah's tenancy, she went abroad for around 6 months. On her return, it would be understandable that she would spend some time with her husband. He could not reasonably have been expected to conclude that she had begun living at the Property on or before 12 October 2025 whilst Mr Saif Ullah was asserting the contrary. Certainly not over the short period between 12 and 22 October 2025 when the Respondent was notified otherwise by the Council.

39. With effect from that date, the Respondent had been given, firstly, until 31 October 2025 to apply for a licence. It was plainly reasonable to have accepted that given deadline and not to have felt obliged to make an application prior to its expiry. He then made some further enquiries of the Council, promptly and in good faith, as to

whether an HMO licence was required as he did not believe it was. He provided supporting evidence, all whilst accepting that he would make the application if the Council insisted. The Council confirmed its insistence but it was not unreasonable for the Respondent to have awaited its response. He was given a further deadline and complied.

40. The Tribunal accepted that it was reasonable to allow the Respondent some time to make enquiries of the Council and, to a certain extent, to challenge its findings, especially when formulated after relatively superficial consideration of the Property's occupancy. The Respondent was proactive, prompt and professional in his engagement with the Council, including the provision of supporting documentation. The Tribunal concluded therefore that certainly at all times from 23 October 2025 onwards (and indeed at all relevant times) he would have had a reasonable excuse for not applying for an HMO licence.

Issue 3: whether to make a rent repayment order?

41. The Tribunal had no reason to consider this issue in any depth. It simply opined that it would be a very unattractive proposition to allow a tenant, such as Mrs Aung, to agree a tenancy on the basis that their husband would not be living with them, only to then rely on their husband's residency in support of an application for a rent repayment order due to a failure to obtain an HMO licence, in circumstances where it was their husband's presence that triggered the requirement for a licence.

Judge M. Hunt

10 June 2026