FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00BE/HMG/2026/0027.**
Property	**:**	**Flat 5, 235 Lower Road, Surrey Quays, London SE16 2LW**
Applicant	**:**	**Jack Mayo** **Samuel Heslop**
Representative	**:**	**Christina Leong of Justice for International Students**
Respondent	**:**	**Cue Property Holdings (Rotherhithe) Ltd**
Representative	**:**	**Alex Vinter (director)**
Type of application	**:**	**Application for a rent repayment order by tenant** Sections 40, 41, 43, & 44 of the Housing and Planning Act 2016
Tribunal	**:**	**Judge Adrian Jack, Tribunal Member** **Rachel Kershaw BSc, Tribunal Member** **Adam Spielman**
Date of Decision	**:**	**12th November 2026**

DECISION

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1. By an application dated 1st December 2025, the applicant tenants sought rent repayment order ("RRO") in respect of an offence under section 95(1) of the Housing and Planning Act 2016 against the respondent landlord in respect of the period from 1st June 2024 to 30th May 2025.

2. The Tribunal gave directions on 14th April 2026 and there were no issues about compliance with these. The Tribunal heard the matter on 9th

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November 2026. The tenants were represented by Ms Leong of Justice for International Students. Mr Alex Vinter, a director of the landlord, represented the respondent.

The facts

3. There was some measure of agreement on the facts. The respondent granted the tenants a twelve-month tenancy from 1st June 2024 to 30th May 2025 at a rent of £1,700 per month payable in advance. The total rent paid was £20,400. It was common ground that during the period of the letting to the applicants the property was in an area subject to selective licensing by the London Borough of Southwark.

4. The landlord applied for selective licence on 30th May 2025, which was eventually granted after the tenancy agreement ended. It was common ground that, save for the defence of reasonable excuse (see section 95(3A) of the Housing Act 2004), the respondent was guilty of an offence under section 95(1) of the 2004 Act up to and including 29th May 2025.

5. Whilst it is for the applicants to prove to the criminal standard of "beyond reasonable doubt" that the landlord has committed an offence, it is for the landlord to prove the defence of reasonable excuse. The standard of proof in relation to this defence is, however, the civil standard of balance of probabilities, not the criminal standard.

6. Mr Vinter gave evidence. Save for one point on which we are doubtful, we accept his evidence. The respondent is one of three companies in common ownership. The company rents about 111 properties, largely, if not exclusively, in Southwark. They were familiar with Southwark's licensing requirements and licensing systems. In September 2023, Southwark announced the introduction of selective licensing. Mr Vinter made preparations for making a bulk application for licences and we have seen the spreadsheet which he prepared and regularly updated. Southwark gave a discount of about 30 per cent on the licence fees for early registration, so early registration was advantageous.

7. In relation to some six or seven properties, there were difficulties registering because the properties were not on Southwark's databases. Southwark insists on landlord's registering for selective licensing by applying using the local authority's website. Paper applications were not possible. Each application has to be in respect of a property chosen from a drop-down menu. If a property is not on the drop-down menu, it cannot be selected and no application can be submitted in respect of that property. There were substantial delays in getting Southwark to update its databases.

8. The issue of delay on the part of Southwark's licensing team is not a new problem. Mr Vinter took us to correspondence with the council about obtaining a licence for 186A Lower Road, which was a house in multiple occupation ("HMO"). On 5th April 2019 Southwark wrote to say:

"Hi Alex, Sorry for the delay in responding to you, Liz Wheeler no longer works for the council and her work is slowly being allocated to other officers. I've just taken a look at your application but before I can fully consider it I will need a plan of the property showing all room dimensions. I've looked on our system but cannot find a copy. If you could forward that to me I'll get right back to you.

Regards, William Radford, Team Leader, Private Sector Housing Enforcement and Licensing, Southwark Council"

9. Mr Vinter replied the same day as follows:

"Hi William, I met Liza at the property in order to verify the one I supplied, she measured everything up and then proceeded with providing the provisional licence which we appealed. She said that the floorplan I supplied was not satisfactory, but please do find the one I drew up attached in case it can be considered.

Kind regards, Alex"

10. On 30th November 2023, Mr Vinter wrote to Xenia Baldiviezo at the Council as follows:

"Dear Xenia, I wonder if you or one of your team can assist with this overdue HMO licence application for 186a Lower Road, SE16 2UN (application number 864249). Liza Wheeler original[ly] dealt with and attended the property in person on 22/01/2019. She sent a dra[f]t HMO licence shortly after her visit. We raised an appeal in writing as we felt that the room allocation was incorrect and asked for guidance on how this can be changed. I believe the last correspondence received from Southwark after multiple chases over the years was with William Radford on 24/04/2019, copied below. Please confirm how we can move this situation forward as I feel our appeal and communications have been ignored and as a result a proper licence has not been issued, despite spending time on the application and releasing payment for it in good faith.

Kind regards, Alex"

11. Ms Baldiviezo replied on 4th December 2023 as follows:

"Dear Alex, Thank you for the email. I am sorry that this licence was not processed. We are now processing licences on a different software. Can you please submit a new licence application on our new landlord licensing portal? When you apply you can use the below bypass code to skip payment at that stage. We will then take into account the payment of £765 that was paid previously and will also apply the 30% early bird discount to your fee. The licence will then be assessed with the information you provide and in the event that you disagree to anything, you will be able to submit a fresh representation."

12. The HMO licence was eventually granted on 17th March 2025, some six years after the process was commenced.

13. In relation to the 2023 selective licensing exercise, the Council's treatment of 146A and 146B Lower Road is instructive. On 15th March 2024, Tierney Golding, who was assisting Mr Vinter, wrote to the relevant officer at Southwark, exhibiting a screenshot of the relevant drop-down menu:

> "I've logged in to prepare the application for 146A and 146B Lower Road, neither of them are showing? Not at the bottom when I scroll down either."

14. On 19th March 2024, the officer replied to say: "You can click on the link 'I can't find the address in the list' and input the address manually." The same day Tierney Golding replied:

> "Hi Syeda, This is what we done before for addresses that weren't on the list previously. We would click through to manually add them in but then we would have to wait for them to be added to the list before selecting them and creating the application. If the address is not on the drop down list to be selected, the application cannot be started. I done this before for Flat A, 146 and Flat B, 146 but after several days/possibly a week it wasn't added to the list and Alex reached out to you to say it still hadn't added. I've just tried it again for both and it is has brought up this message: [A box saying 'This missing address request has been passed on the licensing team [*sic*]. They will be in touch with you in due course.']
>
> Kind regards, Tierney"

15. The officer responded:

> "Hi I'm sorry about this – the addresses are showing on the database so I'm not sure why it's not coming up when going to apply. Leave this with me – I will report it to metastreet to look into further. I'll keep you updated.
>
> Best, Syeda Nahar, Unit Support Officer Private Sector Housing Enforcement and Licensing"

16. It is noticeable that Southwark were indicating that they would give the respondent an update when the database was updated.

17. We turn then to the instant property. 235 Lower Road is a mixed-use block. The ground floor comprises commercial premises. Above the ground floor there were originally four flats. In about 2022 the landlord obtained planning permission for an additional flat at the top of the building and built the addition. This became Flat 5.

18. On 29th January 2024 Mr Vinter wrote to Ms Baldivieso (with copy to Ms Nahar) at Southwark, as follows:

"Good morning, We are putting all the application in now in bulk, most of the paperwork is uploaded and just now completing all the applications. Could I ask you for 3 different bypass codes as the properties are owned by 3 different companies, Tyshoe Limited, Surrey Quays Property Company Limited, Cue Property Holdings (Rotherhithe Limited). This allows us to keep the payments separate for accounting purposes.

We are unable to complete 2 of the applications as the addresses are yet available on the database, wondering if there is anything you can do as we are worried they won't be added to the database by the time the discount period elapses at the end of this month, the relevant properties are:

• Tyshoe Limited: 205A Rotherhithe New Road, SE16 2BA

• Cue Property Holdings (Rotherhithe) Limited Flat 5, 235 New Road, SE16 2UG

We have applied for these to be added already via the application system.

Any help is appreciated, thank you!

Kind regards, Alex"

19. The following day, he wrote again to say:

"Just to let you know the licencing portal section has gone down on your website this afternoon, we cannot submit anything at this moment, most of our applications are sitting there 90% completed in draft form, so really hope this is resolved shortly! If you could let me know about the 2 address queries below. The two new addresses which were added to 'Gazette' last week are still not showing on your website, so we are also unable to process the licence for those two: - Flat A, 146 Lower Road, SE16 2UG - Flat B, 146 Lower Road, SE16 2UG."

20. The same day Southwark replied:

"Hi Alex, I can quickly answer about logging into the website. I will answer about the two addresses later. Please try this link instead: https://southwark.metastreet.co.uk/

You may need to say 'password forgotten' and reset the password. It should work after that. We have extended the early bird discount to the end of the week, FYI.

Thanks, Xenia Baldiviezo"

21. The following day Mr Vinter replied:

"Hi, Just an update, as we are having trouble!

> Tyshoe Limited: We have completed all applications, but cannot complete as we do not have the bulk payment code (log-in: tierney@cueproperties.com)
>
> Surrey Quays Property Company Limited: We also require a bulk payment code, ideally different from the one above (log-in: alex@cueproperties.com)
>
> Cue Property Holdings (Rotherhithe) Limited: Cannot access this account at all - despite numerous attempts and password resets (log-in: info@cueproperties.com). A bulk payment code would be useful for this also.
>
> The following properties still cannot be accessed: - 146A Lower Road, SE16 2UG - 146B Lower Road, SE16 2UG - Flat 5, 235 Lower Road, SE16 2LW
>
> This one is now showing, thank you: - 205A Rotherhithe New Road, SE16 2BA
>
> Kind regards, Alex"

22. The next day Ms Nahar sent three access codes. Mr Vinter responded on 3rd February 2024 to say:

> "We still do not have access to these properties:
>
> - 146A Lower Road, SE16 2UG
>
> - 146B Lower Road, SE16 2UG
>
> - Flat 5, 235 Lower Road, SE16 2LW
>
> Two of which (146A & B) were confirmed as being added to the Gazetteers database some time ago (please see attached e-mail confirmation 24/01/2024).
>
> Kind regards, Alex"

23. Unfortunately it appears that Southwark did not update its systems (or at least the relevant databases) to reflect the additional flat, Flat 5. To pursue the updating of the databases, Mr Vinter contacted Royal Mail. In an email of 14th March 2024 replying to Mr Vinter's request that they add Flat 5 to the post code database, the Royal Mail explained:

> "I'm sorry, it appears we haven't received notification from your local authority about Flat 5 at the address below. Local authorities are the statutory body responsible for officially naming and numbering properties and thoroughfares. Please contact their street naming and numbering department, and request they notify us of the address. Once we've received this information we can add the address to our Postcode Address File."

24. On 17th July 2024, Southwark sent the following email:

> "Dear Surrey Quays, This is a reminder to let you know that you are yet to complete your property licence application(s) for the following property(s):
>
> Flat A 146, Lower Road, London, SE16 2UG
>
> Flat B 146, Lower Road, London, SE16 2UG
>
> Visit London Borough of Southwark's website to complete your application(s) or for more information on our licensing scheme."

25. No similar email was sent regarding Flat 5, 235 Lower Rd. The obvious inference is that the database had not been updated for Flat 5, so it would not appear on the drop-down menus.

26. Mr Vinter's evidence to us was that he or his staff checked the drop-down menus to see whether Flat 5 had been added to the relevant database. We accept that there was some checking in this way, but one can be doubtful that it occurred as often as every three or four weeks, as Mr Vinter told us. Nonetheless, we find as a fact on balance of probabilities that Southwark did not add Flat 5 to the relevant database. Thus during the period of the lease to the applicants the respondent could not make an application for a selective licence.

27. We note that the Council did not add Flat 5 to the valuation lists for Council Tax. It is only now in November 2026 that they are seeking to agree a valuation for the property. Mr Mayo confirmed to us that during their occupation of the flat they had been unable to obtain a wi-fi connection in the flat, because the telecoms providers did not recognise the address of Flat 5. These facts reinforce our view that there was something seriously wrong with Southwark's databases.

28. At the end of May 2025 the letting agent contacted Mr Vinter about putting Flat 5 on the market for a further rental. This prompted Mr Vinter to see if anything could be done about fixing the database for Flat 5. He had earlier had dealings with a different officer in a different department at Southwark, Jon Enock, and thought to try him. On 30th May 2025, he wrote:

> "We have another address which is missing which we want to request be added so we can apply for a licence to Southwark Council. The full address is: Flat 5, 235 Lower Road, SE16 2LW and it is also owned by Cue Property Holdings (Rotherhithe) Limited. Please do let me know if there are any further details that you require. I will also request this directly through the Southwark system.
>
> Kind regards, Alex"

29. Mr Enock replied the same day as follows:

"Hi Alex, Looks as if the address has been around on my database since early 2024. There may have been an issue with a dataload so I'll make some changes and get it into an update file to update the site.

Kind regards, Jon Enock, Gazetteers Manager

Applications | Technology and Digital Service"

The law

30. In *Marigold v Wells* [2023] UKUT 33 (LC), [2023] HLR 27 the Lands Chambers held:

> "46. The question whether a person has a reasonable excuse for conduct which would otherwise amount to a criminal or regulatory offence arises in many different contexts and, thankfully, there is no shortage of guidance on how a court or tribunal should approach it.
>
> 47. A useful example is the decision of the Upper Tribunal, Tax and Chancery Chamber, in *Perrin v HMRC* [2018] UKUT 156 (TCC)… That was a taxpayer's appeal against daily penalties for late filing of her self-assessment tax return. She said she had a reasonable excuse because she genuinely believed that she had filed her return online but had inadvertently omitted to complete the final stage of submission; when her mistake was pointed out to her she submitted a new return but this time for the wrong year. The FTT held that she had had a reasonable excuse for her initial failure to file but that this had come to an end when HMRC informed her that she had not completed the process. The taxpayer's case on appeal was that a genuine and honestly held belief that she had done what was required should afford a reasonable excuse, whether or not it was objectively reasonable for her to have held such a belief. The Tribunal held that, to be reasonable, an excuse must be *objectively* reasonable and that it was not enough that it be based on a genuinely or honestly held belief. At paragraph 71, it emphasised, however, that in deciding whether an excuse was objectively reasonable it was necessary to have regard to all relevant circumstances, including those of the individual taxpayer. As it explained, 'because the issue is whether the particular taxpayer has a reasonable excuse, the experience, knowledge and other attributes of the particular taxpayer should be taken into account, as well as the situation in which that taxpayer was at the relevant time or times.' Having then found that the FTT had not erred in principle in making its assessment, the Tribunal declined to interfere with it and dismissed the appeal.
>
> 48. The Tribunal in *Perrin* concluded its decision with some helpful guidance to the FTT, much of which is equally applicable in the

sphere of property management and licensing. At paragraph 81 it said this:

> '81. When considering a "reasonable excuse" defence, therefore, in our view the FTT can usefully approach matters in the following way:
>
> > (1) First, establish what facts the taxpayer asserts give rise to a reasonable excuse (this may include the belief, acts or omissions of the taxpayer or any other person, the taxpayer's own experience or relevant attributes, the situation of the taxpayer at any relevant time and any other relevant external facts).
> >
> > (2) Second, decide which of those facts are proven.
> >
> > (3) Third, decide whether, viewed objectively, those proven facts do indeed amount to an objectively reasonable excuse for the default and the time when that objectively reasonable excuse ceased. In doing so, it should take into account the experience and other relevant attributes of the taxpayer and the situation in which the taxpayer found himself at the relevant time or times. It might assist the FTT, in this context, to ask itself the question "was what the taxpayer did (or omitted to do or believed) objectively reasonable for this taxpayer in those circumstances?"'

(I have omitted a fourth step because it is referable to a specific provision of the Finance Act 2009 and has no equivalent in the 2004 Act).

49. The Tribunal then dealt with a particular point which is regularly encountered in HMO licensing cases and which therefore merits attention:

> '82. One situation that can sometimes cause difficulties is when the taxpayer's asserted reasonable excuse is purely that he/she did not know of the particular requirement that has been shown to have been breached. It is a much-cited aphorism that "ignorance of the law is no excuse", and on occasion this has been given as a reason why the defence of reasonable excuse cannot be available in such circumstances. We see no basis for this argument. Some requirements of the law are well-known, simple and straightforward but others are much less so. It will be a matter of judgment for the FTT in each case whether it was objectively reasonable for the particular taxpayer, in the circumstances of the case, to have been ignorant of the requirement in question, and for how long.'"

Conclusion

31. We have set out our conclusions in respect of points (1) and (2). At no point until 30th May 2025 was it possible apply to register Flat 5 on Southwark's application system.

32. We note that when Mr Vinter contacted Mr Enock, Southwark did finally fix its database so that the application system was usable. With hindsight, of course it is unfortunate that Mr Vinter did not contact Mr Enock earlier. However, this is, we find, a conclusion which is reached with benefit of hindsight. In our judgment Mr Vinter had acted reasonably earlier. He had regular contact with the two relevant officers in the relevant department for the issuing of licences. They had the responsibility for ensuring that Southwark's systems were able to accept applications for selective licences. He said that he and his staff did check the drop-down menus. No evidence was provided to contradict this..

33. Ms Leong did not submit that the only option for the respondent, unless and until it was able to obtain a selective licence, was to refuse to let the property out. In our judgment she was right not to make this argument. Flat 5 was at all times suitable for the grant of a selective licence. To refuse to let the flat out would have been unreasonable. Firstly, it is at least doubtful that the respondent would have any claim against Southwark for its financial losses. Secondly, the applicants would not have had their home at the Flat. Thirdly, there is a general housing shortage in London.

34. In our judgment the steps taken by Mr Vinter were objectively reasonable in the circumstances. Accordingly the defence of "reasonable excuse" is made out.

Costs

35. We have a discretion as to the fees payable to the Tribunal. Here the applicants have lost. It is therefore appropriate that they should bear the cost of these fees. Accordingly we make no order for costs.

DETERMINATION

(a) The application for a rent repayment order be refused.

(b) There be no order for the costs payable to the Tribunal.

Signed: Judge Adrian Jack **Dated: 12th November 2026**

LEGISLATION

Section 95 of the Housing Act 2004, so far as material, provides:

"(1) If a house is required to be licensed under this Part (see section 85(1)) but is not so licensed, an offence is committed by—

(a) any person within subsection (1A), and

(b) any person who as landlord under a tenancy or licensor under a licence to occupy has an estate or interest in, or a right in relation to, the house that is superior (whether directly or indirectly) to the estate, interest or right of any person within subsection (1A).

(1A) The following are within this subsection—

(a) any person having control of or managing the house;

(b) any person who is the landlord or licensor in relation to a person occupying the house under a tenancy or licence.]

...

(3) In proceedings against a person for an offence under subsection (1) it is a defence that, at the material time—

(a) a notification had been duly given in respect of the house under section 62(1) or 86(1), or

(b) an application for a licence had been duly made in respect of the house under section 87,

and that notification or application was still effective (see subsection (7)).

(3A) In proceedings against a person for an offence under subsection (1)(a) it is a defence for them to prove that they had a reasonable excuse—

(a) for having control of or managing the house, or

(b) for being the landlord or licensor in relation to a person occupying the house under a tenancy or licence,

in circumstances in which the house was required to be licensed under this Part but was not so licensed."

Section 40 of the Housing and Planning Act 2016 provides:

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

(2) A rent repayment order is an order requiring the landlord under a tenancy of housing in England to— (a) repay an amount of rent paid by a tenant, or (b) pay a local housing authority an amount in respect of a relevant award of universal credit paid (to any person) in respect of rent under the tenancy."

Among the relevant offences are sections 72(1) and 96(1).

Section 41(2) provides:

"A tenant may apply for a rent repayment order only if —

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

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

Section 43 of the 2016 Act provides that the FtT may make a rent repayment order if it is satisfied beyond reasonable doubt that the offence has been committed, and that where the application is made by a tenant the amount is to be determined in accordance with section 44, which provides (in the form in force at the relevant time):

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

(2) The amount must relate to rent paid during the period mentioned in the table: [The table provides, for the HMO licence offence, 'a period, not exceeding 12 months, during which the landlord was committing the offence.']

(3) The amount that the landlord may be required to repay in respect of a period must not exceed—

(a) the rent paid in respect of that period, less

(b) any relevant award of universal credit paid (to any person) in respect of rent under the tenancy during that period.

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

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

(b) the financial circumstances of the landlord, and

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