



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

Case reference : **CHI/00HE/HBA/2021/0001**

Applicant : **Cornwall Council**

Representative : **Kingsley Keat, Senior Lawyer**

Respondent : **Julie Stoddern**

Type of application : **Application for a banning order –
section 15(1) of the Housing and
Planning Act 2016**

Tribunal : **Judge Tildesley OBE
Mr R Wilkey
Ms Tat Wong**

Date of Hearing : **3 March 2021
Hearing by Video**

Date of Decision : **8 March 2021**

DECISION

SUMMARY OF THE DECISION

The Tribunal makes a Banning Order for Five years, and orders the Respondent to reimburse the Council with the Tribunal fees of £300 by 31 March 2021.

BACKGROUND

1. On 18 December 2020 Cornwall Council (“The Council”) applied for banning order against the Respondent who had been convicted of a ‘banning order offence’ under section 15(1) of the Housing and Planning Act 2016 (2016 Act).
2. A ‘banning order’ is an order made by the Tribunal, banning a person (for a period of at least 12 months) from:
 - (i) letting housing in England;
 - (ii) engaging in English letting agency work;
 - (iii) engaging in English property management work; or
 - (iv) doing two or more of those things.
3. On 2 February 2021 the Tribunal directed that the Application would be heard on 3 March 2021. The Respondent did not provide a statement of case in compliance with the directions.
4. On 3 March 2021 Mr Kingsley Keat, Senior Lawyer, appeared for the Council. Mr Stuart Kenney, Private Sector Housing Team Manager, and Mr Neil Tredwin, Environmental Health Officer were in attendance. The Respondent did not attend.
5. The Tribunal is satisfied that the Respondent was duly notified of the hearing and was aware of the hearing date. The Tribunal notes that she attended the session on 26 February 2021 organised by the Tribunal to confirm that she was able to join the hearing by video.
6. The Council supplied a bundle of documents for the hearing. References to pages in the bundle are in [].

Consideration

7. Under section 16 of the 2016 Act a Tribunal may make a banning order against a person who has been convicted of a banning order offence preventing her from letting housing in England, engaging in English letting agency work; engaging in English property management work; or a combination of these.
8. Banning orders were introduced into legislation as part of a package of measures directed at rogue landlords who do not meet their legal

obligations, sometimes exploiting their tenants by renting out substandard, overcrowded or dangerous accommodation.

9. Lord Bourne of Aberystwyth explained in the House of Lords Debate on Housing and Planning Act 2016 (Banning Order Offences) Regulations 2017 (2017 Banning Order Regulations) that

“These landlords often do not respond to legitimate complaints made by tenants. Some would even prefer to be prosecuted rather than maintain their properties to a decent standard”.

“The purpose of banning orders is to target the most prolific offenders who have been convicted of serious housing, immigration and other criminal offences connected to their role as landlords. The Orders will prevent rogue landlords and property agents earning income from renting out properties or engaging in letting agency or property management work, forcing them either to raise their standards or to leave the sector entirely”¹.

10. The Council stated that the Respondent had been convicted of offences under the Housing Act 2004 (2004 Act) on three separate occasions over an eight year time period. The Council submitted that the Respondent’s offending was extremely serious which placed the occupiers of her property at a high risk of harm. The Council said it had spent a disproportionate amount of time with the Respondent in an effort to change her ways. The Council contended that the Respondent had continued to ignore the legal requirements placed on her as a landlord despite being prosecuted. The Council considered that the only option open to them was to apply for a banning order with the intention of stopping the Respondent from re-offending by prohibiting her from being involved in residential letting.
11. The Respondent owned the freehold of Elunda, 1 North Roskear Village, North Roskear Village, North Roskear, Cambourne, Cornwall (“the Property”) which was a four bedroom detached property located in a semi-rural location. According to the Council, the Respondent had been allowing a wide range of persons who did not have fixed addresses and often had complex health needs to occupy her property in return for payment for over ten years. The Respondent had not submitted a statement of case in connection with these proceedings, and had given no indication to the Tribunal as to whether she objected to the making of a banning order.
12. Before the Tribunal can consider making a banning order under section 16 of the 2016 Act it must be satisfied of various matters.

¹ See Hansard 22 January 2018 Volume 788 HL Debate on Housing and Planning Act 2016 (Banning Order Offences) Regulations 2017

Whether the Respondent has been convicted of a banning order offence?

13. The Council produced a Memorandum of Entry of the Register of Cornwall Magistrates' Court which showed that on 4 November 2020 at Truro Magistrates' Court the Respondent was convicted of an offence of failing to comply with a prohibition order contrary to section 32 of the Housing Act 2014 and of an offence of control of or managing a HMO without a licence contrary to section 72(1) of the Housing Act 2004. The offences were committed between the dates of 28 April 2020 and 17 July 2020. The Respondent was fined £2,500 for each offence, and ordered to pay costs of £5,515 and £190 surcharge to fund victim services [59].
14. The Tribunal observes that the Offences of section 32(1) and section 72(1) of the Housing Act 2004 are named as a Banning Order offences in Schedule 1 of The Housing and Planning Act 2016 (Banning Order Offences) Regulations 2017.
15. The Tribunal is satisfied that the Respondent has been convicted of Banning Order Offences.

Whether the Council has given the Respondent a notice of intended proceedings in compliance with section 15 of the 2016 Act, and whether it has otherwise complied with the procedural requirements of that section?

16. On 13 November 2020 the Council issued the Respondent with Notice of Intended Proceedings to Apply for a Banning Order for a period of 5 years. The Respondent was given the opportunity to make representations by 15 December 2020 [14].
17. On 14 December 2020 the Respondent represented that she only owned the one property and had no involvement in other lettings. The Respondent stated that only herself and two other persons lived in the property, and that she was looking to selling the property [22-23].
18. Mr Kenney for the Council recorded its consideration of the representations made by the Respondent. The Council took into account the effect of a banning order on the tenants at the Property and the impact of the Respondent's ability to earn income from renting out the house. The Council, however, weighed these considerations against the fact that the Respondent had shown a complete disregard of the prohibition order despite being warned of the consequences of non-compliance and that there was a high likelihood of repeat offending. The Council concluded that the Respondent's representations were not sufficient to alter the proposed course of action to apply for a banning order for a period of five years [24].

19. The Council made Application for the Banning Order to the Tribunal on the 18 December 2020 [39]. The Council notified the Respondent of its Application for a Banning Order on 6 January 2021 [27].
20. The Tribunal finds that (1) the Notice of Intended Proceedings was issued within 6 months of the Respondent's conviction for banning order offences; (2) the Notice of Intended Proceedings stated that the Applicant was applying for a Banning Order for a period of 5 years because she had been convicted of offences of failing to comply with a prohibition order and of being in charge or control of HMO without a licence. (3) the Respondent was invited to make representations within period not less than 28 days; (4) the Respondent made representations which were considered by the Council (5) the Application to the Tribunal was made after the closing date for receipt of representations.
21. The Tribunal is satisfied that the Council has given the Respondent a Notice of Intended Proceeding and has complied with the procedural requirements of section 15 of the 2016 Act.

Whether, at the time the offence was committed, the Respondent was a 'residential landlord' or a 'property agent'?

22. Mr Tredwin informed the Tribunal that on 21 April 2020 he served the Respondent with a Section 16 Requisition for Information Notice, after a referral from The Cornwall Rough Sleeper Operational Group. They were concerned that a high number of people were reported residing during the first National Lockdown at the Property. The concerns raised were heightened as a result of the potential spread of coronavirus amongst the residents and the local community.
23. On 28 April 2020 the Section 16 Requisition of Information notice was completed and returned by the Respondent who indicated that she had six individuals residing at her property, not including herself, one of which was staying in a caravan on the front driveway.
24. On the same day a Prevention and Engagement Officer of Cornwall Council confirmed that she had attended the Property to meet with one of her clients who had advised that he was temporarily residing there. The Officer was met by the Respondent and shown around the Property. The Respondent informed the Officer that her client was sleeping on a blow-up mattress on the floor of the living room nearby to the downstairs toilet. The Respondent advised that these arrangements were necessary because of the person's physical health. The Prevention and Engagement Officer observed that there were four males and one female present at the time of her visit. The Officer confirmed that the female was also staying at the Property.
25. On 29 April 2020 PC James Tompson attended the Property after having received reports of people coming and going from the Property whilst

COVID-19 restrictions were in place. During his visit PC Tompson spoke with four individuals, including the female, who confirmed that they lived there on a permanent basis. PC James Tompson was informed that the Respondent also lived there along with another male.

26. Mr Kenney explained that in the past the Respondent had been receiving the housing benefit from the persons residing in the Property. Mr Kenney believed that there were no formal tenancy agreements in place. Mr Kenney said it was now more difficult to check the “rent” received by the Respondent because it was paid by way of Universal Credit, and the Department of Social Security was not prepared to divulge those details to the Council.
27. Mr Tredwin understood that the Respondent had granted licences to the persons occupying the Property. Mr Tredwin stated that the Respondent had been reluctant to disclose details of the rent received from the occupiers at the Property. Mr Tredwin believed that the Respondent was a resident landlord.
28. The Tribunal is satisfied that at the time the offences were committed the Respondent was a residential landlord.

Whether a Banning Order should be made?

29. Having regard to the above findings the Tribunal is satisfied that it can make a banning order. The next question is whether the Tribunal should exercise its discretion to do so.
30. Under section 16(4) of the 2016 Act the Tribunal must consider the following factors in deciding whether to make a banning order.
 - (a) the seriousness of the offences of which the Respondent has been convicted;
 - (b) any previous convictions that the Respondent has for a banning order offence;
 - (c) whether the Respondent is or has at any time been included in the database of rogue landlords and property agents (pursuant to section 30 of the 2016 Act); and
 - (d) the likely effect of the banning order on the Respondent and anyone else who may be affected by the order.
31. The Tribunal had regard to the following factors in determining the seriousness of the offences of failing to comply with a prohibition order and managing an HMO without a licence for which the Respondent was convicted of on 4 November 2020:

- a. The Respondent admitted on the 28 April 2020 that she had six individuals living with her, one of whom was in a caravan on the front drive, and another slept on an inflatable mattress in the living room so that he could be close to the bathroom because of his complex health needs. A prohibition order dated 3 April 2012 restricted occupation of the Property to five persons.
- b. The Property had four bedrooms on the first floor with a shared toilet and sink. A kitchen, living room and bathroom were located on the ground floor. Mr Tredwin stated that he did not consider the property met the fire safety and amenity standards for an HMO. Mr Kenney asserted that the Respondent would not have met the fit and proper person test to hold an HMO licence in view of her previous convictions.
- c. The circumstances of the offending involved overcrowding the property and the avoidance of regulatory and safety standards associated with the licensing of HMOs which put the health and safety of the occupiers at the property at serious risk.
- d. This risk was aggravated by the facts that the persons occupying the property were of mixed gender and of a wide age range, and according to the Council, they were vulnerable with composite health needs. Moreover, the occupants were unrelated and living at the property during the first national COVID-19 lockdown which raised concerns for their own safety and that of the local community.
- e. The Council produced a witness statement from PC 7173 Owen dated 17 September 2020 [79] who reported that
 - i. "I have had numerous previous dealings at the address (the Property), there is a long history of vulnerable persons with complex needs and criminals being housed at the address. The vast majority if not all the persons I have known to frequent the address have some form of criminal history and have issues in relation to alcohol and/or drugs.
 - ii. So far this year alone there have been ten crimes recorded and investigated all with links to the address. These are from minor to serious assaults, public order offences, theft and vehicle interference. There have also been 14 police logs relating to violence and anti-social behaviour and amongst this is multiple numerous incidents that go unreported or police have knowledge of via intelligence. Often crimes and incidents resulting from the address go unreported or can't be fully investigated due to the persons involved not supporting police action.
 - iii. In recent times the reporting of incidents by neighbours has decreased due to them being in fear of repercussions. Neighbours have previously had vehicles damaged after making reports to police and had threats from individuals residing at the address.
 - iv. There is a long history of crime and anti-social behaviour directly linked to the Property and numerous individuals that have frequented there over the years. This history goes a long time

before I was even a police officer and looking back through crime records appears to be significant from 2010 to date”.

- f. The Respondent had ignored the Council’s exhortations to remain within the law and not to put the occupants at risk. Mr Kenney referred to a meeting with the Respondent on 12 July 2017 [83 and 84] where he told her to say no to housing people if it meant breaching the prohibition order. Mr Kenney also advised the Respondent of the likely changes in law regarding the licensing of HMOs and the introduction of banning orders, and that the Council would apply these sanctions if the Respondent contravened the regulatory requirements.
 - g. The Magistrate imposed a substantial fine of £2,500 for each of the two offences for which the Respondent was convicted on the 4 November 2020 . The Magistrate found that the Respondent had made a substantial financial gain from the letting of the Property.
 - h. The Applicant had previous convictions for the same two offences of failing to comply with a prohibition order and of managing a HMO without a licence. On 4 December 2013 the Respondent was fined £250 for each offence. On 21 June 2017 the Respondent was fined £500 for an offence of failing to comply with the prohibition order.
32. The above findings demonstrated that the Respondent showed a blatant disregard of the law which disrupted the peace of the local community and exposed the occupants to significant risks to their health and safety. The Tribunal is, therefore, satisfied that the offences committed by the Respondent were at the high end of seriousness.
33. The Tribunal identified in paragraph 31g above that the Respondent had two previous convictions for the offence of failing to comply with a prohibition order, and one previous conviction for managing an HMO without a licence.
34. The Tribunal considers the circumstances of those two sets of previous convictions relevant to its determination. In support of the first prosecution in 2013 the Council stated that the Respondent received over £21,000 direct in housing benefit from the occupants at the Property. During 2012 of there were 18 occupants who were eligible for housing benefit. The Council also reported that the Respondent offered no mitigation for ignoring the prohibition order. In respect of the second prosecution in 2017, the Council said that the evidence indicated that on 1 February 2017 a minimum of nine people were in occupation at the property which was four more than the permitted number set by the prohibition order.
35. The Tribunal notes that Devon and Cornwall and Dorset Police issued a Closure Notice under section 76 of Anti-Social Behaviour Crime and Policing Act 2014 in respect of the Property for three months from 1 September 2020. The Police took this action because of the anti-social

behaviour and crime stemming from the property, and of the safeguarding concerns which had been raised for some of the residents at the property.

36. The Council confirmed that the Respondent's name had not been included in the Database of Rogue Landlords. The Council, however, indicated that it would place the Respondent's name on the Database if a banning order was made.
37. The Respondent did not participate in the proceedings. The Tribunal acknowledges that if a banning order is made it would deprive the Respondent of income derived from renting out the Property. The Tribunal, however, considers that this is an inevitable outcome of a banning order which is designed to prevent landlords from profiteering from the letting of sub-standard accommodation. The Tribunal understands from the Council that the Respondent has an alternative source of income from her employment as a live-in carer for an elderly gentleman. The Tribunal notes that the Respondent is 52 years of age and capable of finding other gainful employment. Further the Tribunal observes that the Respondent is not a portfolio landlord and that her only source of rental income is from the Property. Finally the Respondent would continue to live at the Property because the banning order would only prevent her from the letting the Property to other persons. The Tribunal, therefore, concludes that following the imposition of a banning order the Respondent would still retain her home and continue to earn a wage. The only impact of the banning order on her is the loss of rental income which is what the order is intended to do.
38. The Respondent stated that there were two other persons living at the Property in her reply to the Council's Notice of Intention to impose a Banning Order. At the hearing Mr Keat stated that the Council would house those two persons by providing them initially with emergency accommodation if a banning order is imposed. The Tribunal understands that the occupiers at the property have no security of tenure and that they live there under the terms of a licence. The Tribunal is satisfied that the arrangements the Council intends to put in place for the occupiers once a banning order is imposed would diminish the adverse impact upon them from giving up their occupation of the property.
39. The Tribunal concludes the seriousness of the offences committed by the Respondent, and her previous convictions justify the making of a banning order. Further the Tribunal is satisfied that the making of a banning order would have no adverse impact on the Respondent and the present occupiers except that the Respondent would be denied rental income which is the inevitable consequence of a banning order.
40. The Tribunal, therefore, grants the Application for a Banning Order.

What should be the terms of the Order?

41. The Council requested an order for five years. The Tribunal considers that a period of five years is sufficient to reflect the risks posed by the Respondent as a residential landlord.
42. The Tribunal is satisfied that the order should prevent the Respondent from letting houses and in engaging in letting agency and property management work. Finally the Tribunal holds that as an anti-avoidance measure the Respondent should be banned from acting as an officer of any company that lets housing or is engaged in property management or letting agency work in England and from any involvement in the management of such a company.
43. The Tribunal decides that the banning order takes effect from 3 March 2021 and remains in force until 3 March 2026.
44. The Tribunal also decides that occupational arrangements for the existing tenants at the Property as at 3 March 2021 remain in force until 31 March 2021. This would allow the Council sufficient time to rehouse those tenants.
45. The Council requested an order for the Respondent to reimburse it with the Tribunal's fees for the application and hearing. As the Council was successful with its application for a banning order the Tribunal orders the Respondent to reimburse the Council with fees of £300 by 31 March 2021.
46. The Tribunal announced its decision at the hearing and served the banning order by email on the parties on 3 March 2021.

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case by email at rpsouthern@justice.gov.uk
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.
5. A person who did not attend the hearing may apply in writing to the Tribunal at rpsouthern@justice.gov.uk for the decision to be set aside within 28 days from the date of the decision . If such an application is made the person must state the reasons why s/he did not attend and why it is in the interests of justice to set aside the decision. It will be a matter for the Tribunal whether the decision is set aside.