



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

**Case reference** : **CAM/12UB/HRA/2021/0001  
CAM/12UB/HBA/2021/0004**

**Applicant** : **Paul Sanderson (database appeal)  
Cambridge City Council (banning  
order)**

**Respondent** : **Cambridge City Council (database  
appeal)  
Paul Sanderson (banning order)**

**Type of application** : **Appeal against a decision to make an  
entry in the database of rouge  
landlords – section 32(1) of the  
Housing and Planning Act 2016; and  
  
Application for a Banning Order –  
section 15 of the Housing and  
Planning Act 2016**

**Tribunal member(s)** : **Judge Wayte  
Regional Surveyor Hardman  
Mr N Miller**

**Date of decision** : **24 March 2022**

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**DECISION**

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**Decision of the tribunal**

**The tribunal has decided to make a Banning Order for 30 months in the terms set out in the order sent to the parties with this decision. As Cambridge City Council will now be under a duty to make an entry in the database of rogue landlords and property agents under section 29 of the Housing and Planning Act 2016, the decision notice issued under section 30 (the discretionary power) and appealed by Mr Sanderson is cancelled.**

## **The applications**

1. Mr Sanderson appealed the decision of Cambridge City Council made on 18 November 2021 to enter his name in the database of rogue landlords and property agents pursuant to section 30 of the Housing and Planning Act 2016 (“the 2016 Act”). The tribunal also received an application from Cambridge City Council for a banning order against Mr Sanderson under section 15 of the 2016 Act. Both applications followed Mr Sanderson’s plea of guilty on 19 May 2021 at Cambridge Magistrates’ Court to failure to comply with an improvement notice issued in respect of 136 Perne Road, Cambridge. That conviction resulted in a fine of £4,000 and is a banning order offence as set out in the Housing and Planning Act 2016 (Banning Order Offence) Regulations 2018.
2. Directions were issued on 16 December 2021 for the applications to be heard together. Cambridge City Council prepared a hearing bundle in accordance with those directions and Mr Sanderson provided his bundle slightly late, on 18 February 2022, confirming that he had made an application to appeal his conviction on or about 25 January 2022. He therefore requested an adjournment of the hearing which had been listed for 15 March 2022. Cambridge objected to that application and I refused it by letter dated 25 February 2022, agreeing with those objections which were that Mr Sanderson’s appeal was unlikely to succeed, had been made about 8 months too late and that in any event, if it were successful, the 2016 Act provided for an application to be made to the tribunal to set aside any order made as a consequence of that conviction.
3. On 26 February 2022 Mr Sanderson appealed that decision and on 1 March 2022 I issued a decision refusing permission to appeal on the basis that I did not consider it had a realistic prospect of success for the reasons given previously. Although I did not know at the time, on 28 February 2022 Cambridge Crown Court had refused Mr Sanderson’s application to appeal his conviction and sentence.
4. Both parties attended Cambridge County Court on 15 March 2022 for the hearing, Mr Sanderson representing himself and Mr Williams of counsel for Cambridge, assisted by their witness Emma Barker, a Technical Officer in the Residential Team. At the start of the hearing Mr Sanderson renewed his application for an adjournment as he stated that he had now appealed the refusal of his application to appeal his conviction to the Court of Appeal and he had also appealed to the Upper Tribunal in respect of my decision to refuse to adjourn the hearing. He also stated that he had issued a summons against Emma Barker for alleged criminal damage to his mobile home. Mr Sanderson handed up a small bundle of papers showing that his application in respect of his conviction had been made to the Court of Appeal’s Civil Division on 11 March 2022 and a separate bundle in respect of an

application to the Upper Tribunal (Lands Chamber) on the same date in respect of the adjournment.

5. Mr Williams objected to the application to adjourn the hearing, reiterating the council's position in respect of the original application. He also mentioned a possible prejudice to the council once the banning order offence became "spent" under the Rehabilitation of Offenders Act 1974 on 19 May 2022. In particular, the 1974 Act states that convictions which result in a fine are "spent" after 12 months from the date of the conviction, whether or not the fine has been paid and government guidance indicates that spent convictions should not be relied on to make a banning order. Finally, he pointed out that the appeal in respect of the conviction had been sent to the wrong division of the Court of Appeal.
6. The tribunal decided to refuse the application. As stated in my decision dated 1 March 2022 and in the light of the decision of the Crown Court on 28 February 2022, the tribunal considered that the application to appeal the conviction was unlikely to be successful and in any event the appeal had been sent to the wrong division. In the unlikely event that the appeal was successful, any order made could be set aside on the application of Mr Sanderson, balanced against the risk of prejudice to Cambridge City Council should the hearing be delayed beyond 18 May 2022. In all the circumstances, the tribunal considered that the hearing should go ahead. For the avoidance of doubt, the tribunal did not consider the allegation of criminal damage against Emma Barker was relevant.
7. Given that if a banning order was made, the appeal in respect of the database would be academic (as the 2016 Act would oblige Cambridge to make a database entry), this decision will deal firstly with the application by Cambridge for a banning order and then with Mr Sanderson's appeal in respect of the database, if necessary.

### **The law**

8. Sections 14-27 of the 2016 Act contain the provisions in respect of banning orders. In summary, a LHA may apply to the tribunal for a banning order against a person who has been convicted of a banning order offence and who was a residential landlord or property agent at the time the offence was committed.
9. Before applying for a banning order and within 6 months of the date of the conviction, the authority must give the person a notice of intended proceedings. This notice must give the reasons for the application, state the length of the proposed ban and invite representations within a period of not less than 28 days ("the notice period") (section 15(3) of the 2016 Act).

10. In deciding whether to make a banning order the tribunal must consider:- (a) the seriousness of the offence of which the person has been convicted, (b) any previous convictions that the person has for a banning order offence, (c) whether the person is or has at any time been included in the database of rogue landlords and property agents, and (d) the likely effect of the banning order on the person and anyone else who may be affected by the order (section 16(4) of the 2016 Act).
11. The effect of a banning order is severe, preventing a person from lawfully letting housing or engaging in letting agency or property management work in England. A banning order may also include provision banning the person from being involved in any company that carries out such an activity. Breaching a banning order is an offence and may also give rise to a financial penalty. A LHA must also enter the name of any person with a banning order in its rogue landlord database.
12. The government department responsible for housing regulation, now called the Department for Levelling Up, Housing and Communities, published guidance in respect of banning orders under its old name (MHCLG) in April 2018. It is good practice for a LHA to follow that guidance and the tribunal may also take it into account when coming to its decision. That guidance states at paragraph 1.7 that banning orders are aimed at *“Rogue landlords who flout their legal obligations and rent out accommodation which is substandard. We expect banning orders to be used for the most serious offenders”*.

### **Cambridge’s application**

13. 136 Perne Road, Cambridge is a three-bedroom semi-detached house, built around 1940. On the ground floor there is a kitchen, lounge and dining room and on the first floor three bedrooms and a bathroom. The property is owned by Mr Sanderson, who lives at 56 Mowbray Road, Cambridge, which he also owns.
14. Mr Williams started with the memorandum of conviction for the banning order offence. This showed that Mr Sanderson pleaded guilty on 19 May 2021 to 4 counts of failing to comply with an operative improvement notice dated 2 December 2016 in connection with 136 Perne Road. The separate offences were: failure to provide a safe suitable and efficient space heating appliance; failure to provide a suitable fire alarm system with coverage and additional detection in the kitchen; failure to investigate and remedy penetrating damp and other repairs within the kitchen and failure to renew broken glazing to the bathroom window – amounting to a single banning order offence. All works should have been completed by 30 January 2017. He was fined £4,000.

15. The offence was said to have been committed on 22 January 2020. That was the date of an inspection by Emma Barker and others. Her witness statement dated 13 January 2022 confirmed that based on information from one of the tenants present at the time, the property was a House in Multiple Occupation (HMO), occupied by at least five unrelated occupants sharing the kitchen and bathroom. On 31 January 2020, the council inspected 56 Mowbray Road – another three-bedroom house, where they found evidence of 8 people living in 5 households, including Mr Sanderson. Taken together, Mr Williams submitted that there was ample evidence that Mr Sanderson was a residential landlord at the time the offence was committed.
16. The conviction for a banning order offence and fact that Mr Sanderson was a residential landlord at the time the offence was committed entitled the tribunal to make a banning order. There were two further questions: had the council complied with the procedural requirements and, if so, should the tribunal make a banning order?
17. In terms of the procedural requirements, the Notice of Intention was served on 18 August 2021, within 3 months of the conviction. It relied on the conviction for the banning order offence and proposed a period of 5 years. It also gave Mr Sanderson until 21 September 2021 to make representations. Two sets of representations were received: the first on 10 September 2021 which raised the allegation of criminal damage and collusion by Cambridge and its officers; and a second on 15 September 2021 raising similar issues. Cambridge responded on 26 October 2021, dismissing the representations and confirming that they would proceed with their application.
18. The application was made on 18 November 2021, after the representations had been considered. In the circumstances Mr Williams submitted that the procedural requirements had been met.
19. As to whether a banning order should be made, Mr Williams again started with the banning order offence. The Improvement Notice was dated 2 December 2016, had not been appealed by Mr Sanderson and therefore became operative once the time for that appeal (21 days from service) expired. Four hazards had been identified: excess cold – due mainly to the lack of an appropriate and efficient heating system; damp and mould growth to the kitchen in particular; electrical hazards with dated and faulty electrical installations and fire – with the main issue being the lack of a mains wired fire detection and alarm system as required when the property was being used as an HMO. There had been various inspections culminating with 22 January 2020 when Cambridge concluded that three of the hazards remained, as by that time a certificate had been received by Cambridge confirming that the electrical installations were satisfactory. That resulted in the conviction on 19 May 2021 as stated above.

20. Mr Williams took the panel to the Government Guidance which sets out relevant factors for a local authority to consider when deciding to seek a banning order. First, the seriousness of the offence. While all banning orders are serious, the first consideration is the sentence. Mr Williams submitted that the fine of £4,000 was significant. There were no previous convictions to consider which led onto four further factors: the harm caused to the tenant, punishment of the offender, deter the offender from repeating the offence and deter others from committing similar offences.
21. Although there was no evidence of actual harm, Mr Williams submitted that the potential for harm was considerable, bearing in mind that the property had no proper heating system or fire alarm and was being used as an HMO. Cambridge's concerns in respect of the property dated back to 2014 and the improvement notice had been operative since December 2016.
22. Although Mr Sanderson confirmed that he was selling 136 Perne Road and it appeared to be empty, he had let both of his properties to multiple tenants for many years and in the absence of a banning order may do so again in respect of at least 56 Mowbray Road. Mr Williams submitted that a banning order was the right and proper outcome. This was appropriate punishment for his failure to comply with the Improvement Notice over several years and would act as a deterrent both to him and others. Cambridge proposed 5 years in view of the length of time the issues had persisted.

### **Mr Sanderson's response**

23. Following Mr Williams' submissions, Emma Barker confirmed her witness statements dated 13 January and 1 March 2022 and Mr Sanderson was given the opportunity to cross-examine her. His first question was in respect of the alleged criminal damage to his mobile home in the garden of 136 Perne Road, which she denied. Ms Barker agreed that her involvement had followed a complaint by one of the residents of the mobile home and that no complaints had been made by anyone in the house at any time. Ms Barker also accepted that there were a number of electric radiators in the property and battery-operated smoke detectors. Mr Sanderson also argued that the broken bathroom window was unlikely to harm anyone as there was an extension under that window which would stop any glass from falling to the ground and challenged the allegation of damp, which was maintained by Ms Barker.
24. After the lunch break Mr Sanderson stated that as a result of his cross-examination he had shown that if he had contested the evidence at the Magistrates Court, he might have been found not guilty. He felt that the problems with the property had been blown out of all proportion and insufficient account had been taken of the fact that he was too poor to

carry out the works required by the council. With the exception of the person who complained to the council, who had left owing him rent, all his tenants were happy with the condition of the house and the low rent charged. He produced a letter from the last occupant of the mobile home, Richard Gidongo, who had lived there for three years but was due to move out on 18 March 2022. This letter confirmed that Mr Sanderson had been kind at all times and had allowed him to stay rent free for the last few weeks until he could find somewhere else to live.

25. Mr Sanderson suffered a family tragedy as a young child and has PTSD as a result. He is now 77 and earns his living selling second-hand cars to eke out his pension of some £52 per week. He is selling 136 Perne Road to clear some debts and has no plans to let any of the rooms at 56 Mowbray Road in the near future but wishes to keep that option open in the event that he is no longer well enough to work on the cars. He feels victimised by the council and considers that his property was no worse than many others. He now understands that much higher standards are required and would use an agent to bring his property up to that standard if he lets out rooms in the future. In all the circumstances he submitted that a banning order was too severe a penalty.

### **The tribunal's decision**

26. Mr Sanderson did not dispute Mr Williams' submissions that Cambridge had complied with the procedural requirements set out in section 15 or that he was a landlord at the time the banning order offence was committed. Despite his challenge to the works required by the Improvement Notice, he did not appeal it at the time and has a banning order conviction as at the date of this decision. In the circumstances, the only real issue in this case is whether the tribunal should make a banning order and what order to make.
27. The first consideration is the seriousness of the banning order offence. Although the fine of £4,000 is not particularly severe, we consider that the failure to comply with the improvement notice over several years in the context of the use of the property as an HMO is serious. The tribunal had the benefit of the prosecution papers which included photographs of the various rooms and exterior of the property. It was clearly in a very poor condition, far below a reasonable standard, let alone what is expected of private rented property given the emphasis placed on decent homes in the last few years. Mr Sanderson referred to putting his property in 5 star condition: in the tribunal's opinion this property would attract no stars at all.
28. Mr Sanderson has no previous convictions for banning order offences and there has as yet been no entry in the database to take into account, that leaves consideration of the likely effect of the banning order on Mr Sanderson and anyone else who may be affected by the order. The evidence to the tribunal is that there is no-one else who may be

affected, the last remaining tenant is due to leave the mobile home in the garden at 136 Perne Road on 18 March and the property is to be sold in any event. Mr Sanderson has confirmed that he has no tenants living with him in Mowbray Road at the moment but that he may wish to let rooms in the future, to supplement his pension.

29. It is clear that banning orders are aimed at the most serious offenders who rent out unsafe and substandard accommodation. The tribunal considers that 136 Perne Road was both unsafe and substandard. Mr Sanderson has failed to appreciate the standards required, by law, of private rented accommodation and his evidence to the tribunal indicated that he is not a reformed character – in particular, his attempt to challenge the contents of the Improvement Notice in cross-examination of Ms Barker. That said, in the light of his age and personal circumstances, 5 years is too lengthy a period for the banning order. The tribunal considers that half that period or 30 months is appropriate punishment in all the circumstances of this case and sufficient to act as a substantial deterrent to both Mr Sanderson and others. As suggested by the council, the order will note Mr Sanderson's birth name as it appears that he holds property in that name.
30. As stated above, as a result of the banning order, the council is under a duty to make an entry in the database of rogue landlords and property agents. This renders Mr Sanderson's appeal of the decision to make an entry under their discretionary power academic, however the tribunal considers it is appropriate to cancel the notice to avoid duplication.

**Name:** Judge Wayte

**Date:** 24 March 2022

### **Rights of appeal**

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such



reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).