



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

Case Reference : **MAN/00CB/HBA/2022/0001**

Applicant : **Wirral Council**

Representative : **Mr A Bayatti, Solicitor**

Respondent : **Mr Francis Edward Morrow**

Representative : **Haworth & Gallagher, Solicitors**

Type of Application : **Application for a Banning Order
Housing and Planning Act 2016 – s 15**

Tribunal Members : **Judge J Holbrook
Regional Surveyor N Walsh**

**Date and venue of
Hearing** : **12 December 2022
Liverpool**

Date of Decision : **10 January 2023**

DECISION

DECISION

The application for a banning order is granted.

REASONS

INTRODUCTION

The application

1. Wirral Council (a local housing authority) has applied to the Tribunal for a banning order under section 15 of the Housing and Planning Act 2016 (“the 2016 Act”). The respondent to the application is Francis Edward Morrow of 1 Berkeley Drive, New Brighton, Wirral, Merseyside CH45 1HN.
2. A ‘banning order’ is an order made by the Tribunal, banning a person 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. The application seeks an order banning Mr Morrow from doing any of those things for a period ending on 31 March 2024.
4. On 6 June 2022, the Tribunal sent a copy of the application to Mr Morrow (via his solicitors). At the same time, directions were issued for the conduct of the proceedings. Those directions set out the steps which the parties were required to take in preparation for the application to be heard. Wirral Council subsequently complied with those directions, but Mr Morrow did not: he failed to provide a statement of case in response to the application. In fact the Tribunal has received no communications of any kind during these proceedings from, or on behalf of, Mr Morrow.

The hearing

5. On 12 December 2022, a hearing was held at the Civil & Family Justice Centre in Liverpool. Wirral Council was represented by its solicitor, Ali Bayatti. Mr Morrow failed to attend the hearing but the Tribunal decided to proceed in his absence as we were satisfied that reasonable steps had been taken to notify Mr Morrow of the hearing and that it was in the interests of justice to proceed.

6. In compliance with the Tribunal's case management directions, Wirral Council had provided a written statement of case in support of the application, together with a bundle of supporting documentary evidence (and this was served on Mr Morrow's solicitors in advance). In addition, the Tribunal heard oral submissions from Mr Bayatti as well as limited oral evidence from Steven Bowers (a Housing Standards Team Leader employed by the council) and Katy Taylor (a Healthy Homes Community Worker).
7. Judgment was reserved.

LAW AND GUIDANCE

Effect of a banning order

8. The effect of the provisions in Chapter 2 of Part 2 of the 2016 Act is that a person may be banned from all (or any) of the activities listed in paragraph 2 above (see section 14 of the Act). Any such ban must last at least 12 months and may include a ban on involvement in certain corporate bodies.
9. As well as banning a person from letting housing in England, a banning order may ban them from engaging in 'English letting agency work' and/or 'English property management work'. These expressions are defined in sections 54 and 55 of the 2016 Act. Broadly speaking, however, they cover letting agency and property management activities done by a person on behalf of a third party in the course of a business.
10. Breach of a banning order is a criminal offence (under section 21 of the 2016 Act). It can also lead to the imposition of a civil financial penalty of up to £30,000 (under section 23). There are anti-avoidance provisions (in section 27) which invalidate any unauthorised transfer of an estate in land to a prohibited person by a person who is subject to a banning order that includes a ban on letting.
11. Exceptions can be made to a ban imposed by a banning order: for example, to deal with cases where there are existing tenancies and the landlord does not have the power to bring them to an immediate end. A banning order does not invalidate any tenancy agreement held by occupiers of a property (although there may be circumstances where, following a banning order, the management of the property is taken over by the local housing authority under Part 4 of the Housing Act 2004).

Tribunal's power to make a banning order

12. Section 16 of the 2016 Act empowers the Tribunal to make a banning order on an application by a local housing authority (under section 15). However, before it makes a banning order, the Tribunal must be satisfied that the following conditions are met:

- The local housing authority must have complied with certain procedural requirements before applying for the order.
 - The respondent must have been convicted of a ‘banning order offence’.
 - The respondent must also have been a ‘residential landlord’ or a ‘property agent’ at the time the offence was committed.
13. Section 16(4) provides that, in deciding whether to make a banning order against a person, and in deciding what order to make, 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 (under section 30 of the 2016 Act), and
 - (d) the likely effect of the banning order on the person and anyone else who may be affected by the order.
14. A list of offences which are ‘banning order offences’ is to be found in the Housing and Planning Act 2016 (Banning Order Offences) Regulations 2018. The full list was annexed to the directions issued to the parties by the Tribunal on 6 June 2022. However, for present purposes, it is sufficient to note that the list includes each of the following offences (provided: (i) the offence was committed after 6 April 2018; and (ii) the sentence imposed was not an absolute or conditional discharge):

<i>Act</i>	<i>Provision</i>	<i>General description of offence</i>
Housing Act 2004	s.30(1)	failure to comply with improvement notice
	s.95(1) and (2)	offences in relation to licensing of houses under Part 3

Procedural requirements

15. As already mentioned, before making a banning order, the Tribunal must be satisfied that the local housing authority has complied with

certain procedural requirements. Those requirements are set out in section 15 of the 2016 Act and are summarised below.

16. Before applying for a banning order, a local housing authority must give the person concerned a notice of intended proceedings:
 - informing the person that the authority is proposing to apply for a banning order and explaining why,
 - stating the length of each proposed ban, and
 - inviting the person to make representations within a specified period of not less than 28 days.
17. The authority must consider any representations made during the specified period, and it must wait until that period has ended before applying for a banning order.
18. A notice of intended proceedings may not be given after the end of the period of six months beginning with the day on which the person was convicted of the offence to which the notice relates.

Relevant guidance

19. The Ministry of Housing, Communities and Local Government (as it was then called) published non-statutory guidance in April 2018: *Banning Order Offences under the Housing and Planning Act 2016 – Guidance for Local Housing Authorities*. The stated intention of the guidance is to help local housing authorities understand how to use their powers to ban landlords from renting out property in the private rented sector. Save to the extent that the guidance reflects a statutory requirement, its recommendations are not mandatory. However, it is good practice for a local housing authority to follow them.
20. The guidance notes the Government’s intention to crack down on “a small number of rogue or criminal landlords [who] knowingly rent out unsafe and substandard accommodation” and to disrupt their business model. It recommends that banning orders should be 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.”
21. The guidance also states that local housing authorities are expected to develop and document their own policy on when to pursue a banning order and should decide which option to pursue on a case-by-case basis in line with that policy. It repeats the expectation that a local housing authority will pursue a banning order for the most serious offenders. In deciding whether to do so, the guidance recommends that the authority should have regard to the factors listed in section 16(4) of the 2016 Act (see paragraph 13 above). It also recommends that the following considerations are relevant to an assessment of the likely effect of a banning order: the harm caused to the tenant by the offence;

punishment of the offender; and the deterrent effect upon the offender and others.

22. Wirral Council has adopted its own *Enforcement Policy (2020)*. Among other things, this sets out the council's policy and procedure in relation to banning orders. In large part, this is merely a repetition of aspects of the Government's non-statutory guidance, but it also sets out the internal processes which the council's officers must follow. A copy of this policy was included in the hearing bundle.

BACKGROUND FACTS

23. Mr Morrow owns two houses in Birkenhead which he lets (or has let in the past) to residential tenants. These are at 60 & 64 Birkenhead Road, Seacombe. Both are within a designated area for selective licensing (under Part 3 of the Housing Act 2004). Neither house is currently licensed, although a licence application for 60 Birkenhead Road is pending. It is not known whether Mr Morrow owns additional tenanted properties further afield.
24. On 8 September 2021, at Liverpool Knowsley & St Helens Magistrates' Court, Mr Morrow was convicted of the following offences (among others) under the Housing Act 2004:

In relation to 60 Birkenhead Road:

1. Failure to comply with an operative improvement notice (section 30(1)).

Date of offence: 06/07/2020
Sentence imposed: £250 fine

2. Having control of or managing a house which was required to be licensed under Part 3 of the Act but was not so licensed (section 95(1)).

Date of offence: 06/07/2020
Sentence imposed: £250 fine

and, in relation to 64 Birkenhead Road:

3. Failure to comply with an operative improvement notice (section 30(1)).

Date of offence: 06/07/2020
Sentence imposed: £250 fine

2. Having control of or managing a house which was required to be licensed under Part 3 of the Act but was not so licensed (section 95(1)).

Date of offence: 06/07/2020

Sentence imposed: £250 fine

25. We note that, on 7 February 2020, Mr Morrow had previously been convicted of exactly the same offences in respect of these two properties and that, on 24 April 2020, Wirral Council had made an entry in respect of him in the national database of rogue landlords and property agents established and operated by the Secretary of State under section 28 of the 2016 Act. That entry will be maintained for a period of four years.
26. Mr Morrow's most recent convictions followed a lengthy and concerted effort by Wirral Council to engage with him in respect of his duties as a landlord. Officers from the council inspected the properties at 60 & 64 Birkenhead Road in April and June 2019 following separate complaints about disrepair received from tenants. Improvement notices were issued under sections 11 and 12 of the 2004 Act on 29 April and 6 June 2019.
27. Numerous defects were itemised in each of the improvement notices, many of them being of a serious nature. The notice relating to 60 Birkenhead Road identified 34 items of disrepair which included six 'category 1' hazards (which mainly comprised electrical defects). The back door was incapable of being locked and there was penetrating dampness. There was no evidence that the gas installations and/or gas boiler had been regularly tested or serviced.
28. Similar deficiencies were identified in the improvement notice relating to 64 Birkenhead Road: there were a total of 38 items of disrepair, again including six category 1 hazards. In particular, there was an uncapped gas pipe in the kitchen (and this required the taking of emergency remedial action by the council). There were also loose and defective electrical sockets, loose handrails on the stairs, insecure front and rear doors, and a lack of heating in one of the bedrooms. These defects were of particular concern given that, when initially inspected, the occupiers of the property included three children aged under five.
29. Subsequent re-inspections of the properties revealed that a significant number of the serious defects identified in the improvement notices had not been dealt with (despite the fact that the identities of the tenants had changed since the initial inspections) and Wirral Council therefore initiated the criminal proceedings which resulted in the convictions mentioned above. A number of the tenants had also reported feeling unsafe living in the properties in their current state, and of feeling threatened by Mr Morrow. The council assisted some of them to find suitable alternative housing.
30. During the same period, Wirral Council had taken steps to seek to regularise the licensing position relating to Mr Morrow's properties. From March 2019 onwards, he had been sent several letters explaining the need for him to obtain selective licences for the properties. No licence application has been made for 64 Birkenhead Road but, in July 2021, Mr Morrow eventually applied to licence 60 Birkenhead Road. However,

there were then significant delays in the provision of gas and electrical safety reports, and Mr Morrow did not pay the licence application fee until October 2021 (and then only after the intervention of the council's debt recovery team). The decision in respect of the licence application has been deferred until the present proceedings are concluded.

31. On 9 December 2021, Wirral Council gave Mr Morrow notice of its intention to apply for an order banning him from doing any of the things listed in paragraph 2 above until 31 March 2024. The notice explained that the Council intended to apply for the order because Mr Morrow had been convicted of four banning order offences on 8 September 2021, and it invited him to make representations within 35 days. Such representations were made in a letter from Mr Morrow's solicitors dated 26 January 2022. Having considered those representations, Wirral Council applied to the Tribunal for a banning order on 5 April 2022.

GROUNDS OF APPLICATION

32. Wirral Council applies for a banning order on the ground that Mr Morrow has been convicted of a number of banning order offences which (the Council says) are serious and justify the making of a banning order. The council submit that Mr Morrow has, over a prolonged period, failed to perform his duties as a responsible landlord in respect of both 60 & 64 Birkenhead Road. There have been issues of disrepair that have not been addressed for significant periods and the properties remain unlicensed. Wirral Council has had to correspond and liaise with Mr Morrow on numerous occasions over an extended period without any significant improvement in the position either for the tenants or in respect of Mr Morrow's duties under the selective licensing scheme.

DISCUSSION AND CONCLUSIONS

Mandatory conditions for making a banning order

33. Based upon the evidence outlined above, we are satisfied that Wirral Council has complied with the procedural requirements in section 15 of the 2016 Act.
34. We are also satisfied that, on 8 September 2021, Mr Morrow was convicted of four banning order offences: namely, the offences mentioned in paragraph 24 above.
35. Furthermore, it is clear that Mr Morrow was a 'residential landlord' at the time he committed each of the banning order offences because he was a landlord of housing at that time.

Exercise of discretion to make a banning order

36. Given that the mandatory conditions for making a banning order are satisfied, we must decide whether to exercise the Tribunal's discretion to make such an order. We must do so having regard to the factors

mentioned in section 16(4) of the 2016 Act. In addition, we should have regard to the Government's non-statutory guidance on banning orders (see paragraphs 19 - 21 above) and to Wirral Council's own Enforcement Policy (paragraphs 22). The views of the local housing authority in this particular case are, of course, relevant too and merit respect, but the Tribunal must make its own decision based on all the available evidence.

37. As Mr Morrow has played no part in the proceedings before the Tribunal, he has not provided a statement of case in opposition of the application for a banning order. Nevertheless, we have been provided with a copy of the written representations which were made to Wirral Council on Mr Morrow's behalf by his solicitors in January 2022, in response to the council's notice of intended proceedings, and we have treated those representations as Mr Morrow's grounds of opposition. The arguments they put forward are essentially as follows:
- The banning order offences were committed because Mr Morrow had been unable to access either of the properties concerned for between 18 months and two years;
 - The tenants of both properties were 'problematic', damaging the properties and behaving in a way which led to police involvement;
 - Mr Morrow had attempted to gain access to the properties on multiple occasions, but was refused access. He was therefore unable to arrange for the necessary repairs to be carried out;
 - Mr Morrow's selective licence application was hampered by his inability to gain access to the properties; and
 - Once Mr Morrow was able to access the properties, he carried out all the necessary works.
38. The first factor to consider is the seriousness of the relevant offences, both individually and when taken together. We do not know what factors the magistrates' court took into account in determining the amount of the fines which were imposed on Mr Morrow but, in any event, the severity of the sentence imposed by that court is not a determinative factor for present purposes: it is for the Tribunal to make its own assessment of the seriousness of the banning order offences, based on the evidence now available to it.
39. We find that the relevant offences – particularly those relating to the failure to comply with improvement notices in respect of 60 & 64 Birkenhead Road – were of a serious nature. Given the fact that these properties were in such a sub-standard condition, they posed significant risks to the health and safety of Mr Morrow's tenants. The dangerous condition in which 64 Birkenhead Road was let is especially concerning, given that it was occupied by three very young children, and the fact that

Mr Morrow was unresponsive to the need to address these issues is therefore troubling.

40. We are not persuaded that the representations made on Mr Morrow's behalf constitute a reasonable explanation as to why this state of affairs was permitted to continue for so long. For one thing, there is no evidence to corroborate the assertion that the tenants of the properties were problematic: indeed, this is inconsistent with oral evidence provided on behalf of Wirral Council at the hearing to the effect that the tenants seemed co-operative and "to be doing what they needed to do as tenants". Moreover, the properties were not occupied by the same tenants throughout the period in question: Mr Morrow could (and should) have addressed all necessary issues before re-letting the properties, but he evidently failed to do so.
41. The licensing offences, of themselves, are less serious in our view. Nevertheless, Mr Morrow's conduct appears to show a lack of respect for regulatory requirements applicable to residential landlords and, of course, the offences were made more serious by the fact that the properties were being let whilst not in licensable condition.
42. A factor which makes each of the banning order offences considerably more serious is that Mr Morrow has previous convictions for exactly the same offences in relation to exactly the same properties. The fact that he had to be prosecuted for these offences on two separate occasions indicates that he has not taken his responsibilities as a landlord sufficiently seriously.
43. We note that Mr Morrow has now been included in the database of rogue landlords and property agents (see paragraph 25 above). We recognise, however, that his inclusion in the database results from exactly the same convictions which now form the basis of the present application for a banning order. As such, this is not a factor which adds significant weight to the case for granting such an order.
44. Turning to the question of the likely effect of a banning order, we recognise that such an order would obviously have an adverse effect upon Mr Morrow – because it would curtail his activities as a landlord for a given period of time. The extent of that adverse impact would depend upon the extent and duration of any ban imposed. However, provided the terms of the order are proportionate, the fact that it would necessarily deprive Mr Morrow of a source of income is not a reason why a banning order should not be made. Indeed, the fact that a banning order will have both a punitive and a deterrent effect is an important policy consideration underpinning the legislation.
45. Wirral Council's Enforcement Policy does not provide its officers with detailed guidance to help them decide whether to pursue a banning order in any given situation. However, we note that the Government's non-statutory guidance recommends that banning orders should be used for the most serious offenders: for landlords who flout their legal obligations

and knowingly rent out accommodation which is substandard. We have little hesitation in finding that, regrettably, Mr Morrow falls into this category of landlord. Although, somewhat belatedly, Mr Morrow has carried out some repairs to his properties, he has persistently failed to take the necessary action to make them safe to live in: we note that, as recently as 30 November 2022, significant category 2 hazards were noted still to exist at 60 Birkenhead Road by officers of Wirral Council.

46. Taking all of the above factors into account, we conclude that the Tribunal should grant the application for a banning order in this case.

Extent and duration of the ban imposed

47. We must therefore go on to determine the terms in which a banning order should be made and, in doing so, we must again have regard to the factors mentioned in section 16(4) of the 2016 Act. It is, of course, appropriate also to have regard to the proposals set out in the notice of intended proceedings served on Mr Morrow by Wirral Council, but the Tribunal is not constrained by those proposals.
48. Wirral Council has proposed that Mr Morrow should be banned from doing any of the three things listed in paragraph 2 above (letting housing; property management; and letting agency work). It is important to note that a banning order will not necessarily have that effect however: whilst the 2016 Act permits the Tribunal to order a blanket ban on doing any of these things, it also permits the Tribunal to be more selective, and to restrict any ban to just one or two of those things. Nevertheless, taking account of all the circumstances of this case, we agree with the Council's view that Mr Morrow should be banned from doing all three things. It is self-evident that the ban should include letting housing and engaging in property management work given all Mr Morrow's failings noted above. Moreover, even though we are not aware that Mr Morrow has previously been involved in letting agency work, we nevertheless consider it appropriate to ban him from engaging in that activity too because of the disregard he has shown for the importance of protecting the health and safety of residential tenants.
49. We also consider that, as an anti-avoidance measure, Mr Morrow 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. He should also be banned from any involvement in the management of such a company.
50. We recognise that Mr Morrow is currently letting housing in England and, given the serious consequences of breaching a banning order, it would be unjust to put him in a position of being in immediate breach of the order we make. It is therefore appropriate to make the ban on letting housing subject to an exception to allow Mr Morrow time, either to make permitted/authorised disposals of his tenanted properties or, if he is lawfully able to do so, to serve notice on his tenants to secure vacant possession. Alternatively, the transitional period created by the

exception should afford sufficient time for the local housing authority to pursue the option of making interim management orders, should it decide to do so.

51. Mr Morrow has not provided any details about the tenancy agreement(s) to which his properties (or either of them) are subject and so we do not know when any tenancies are due to expire. We have therefore decided to limit the exception on letting to a period of three months from the date of the order. The exception will apply only to the properties which Mr Morrow has previously told the council about.
52. Wirral Council has proposed that the ban imposed by the order should last until 31 March 2024 (being the date on which the current designation for selective licensing purposes ends). However, whilst we obviously recognise the need to avoid imposing an order which would be unduly harsh and disproportionate, we are concerned to ensure that the length of the ban is sufficient so that the banning order will have the appropriate punitive effect on Mr Morrow, given the very serious nature of his offending. It is also important that the order has a real deterrent effect, both on Mr Morrow himself, and on other landlords. There is no reason why the length of the ban to be imposed should be coterminous with Wirral Council's selective licensing scheme and we consider that the end-date proposed by the council would result in a ban for an insufficient period of time, barely longer than the 12-month minimum.
53. It should of course be remembered that, when Wirral Council applied for a banning order in April 2022, they were actually contemplating a ban of almost two years' duration. The period has effectively been diminished by the time it has taken for these proceedings to be determined. In fact, however, we consider that even a two-year ban would be insufficient to reflect the gravity of the circumstances. Instead, we consider that all the bans imposed by the order should last for a period of three years.

OUTCOME

54. Our findings and conclusions in this case lead us to grant Wirral Council's application and to make the banning order which accompanies this decision.

Signed: J W Holbrook
Judge of the First-tier Tribunal
Date: 10 January 2023