



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

Case References : **LON/00BB/HBA/2022/0001**

Applicant : **London Borough of Newham**

Respondent : **Mr Jahangir Hussain**

Application : **Application for Banning Orders under s.16
Housing and Planning Act 2016**

Members of Tribunal : **Ms H C Bowers MRICS BSc MSc
Mr A Sheftel
Mr A Lewicki**

**Date and Venue of
Hearing** : **30 November 2022 at 10, Alfred Place, London,
WC1E 7LR**

Date of Decision : **15 February 2023**

DECISION

The Tribunal makes Banning Orders against the Respondent, for a period of three years, in the terms set out in the Order that accompanies this decision.

Hearing Arrangements:

(A) This was a face-to-face hearing at 10, Alfred Place, London, WC1E 7LR. The documents that the Tribunal were referred to were a Bundle from the Applicant in two parts of 484 pages and a Bundle from the Respondent of 156 pages. The Applicant made a Reply (150 pages) and as set out in the decision the Applicant was allowed to adduce an Additional Bundle (132 pages). Reference to any document in this decision in respect of the main Bundles will be set out with a prefix A for the Applicant's Bundle and R for the Respondents Bundle. For a document in the Reply the page number will be prefixed by 'Reply' and a document from the Additional Bundle will be referred to with the prefix AB.

The Tribunal also had the benefit of skeleton arguments from both parties. As set out below the Tribunal invited written submissions from the parties regarding the format of any order, if the Tribunal was minded to make such an Order. The Applicant's Further Submissions on the terms of any Order were 4 pages and those from the Respondent were 2 pages.

Background:

1. The is an application brought by London Borough of Newham ("Newham"), seeking a Banning Order under s.15 Housing and Planning Act 2016 ("the 2016 Act"). The Order sought, is to ban Mr Jahangir Hussain from letting housing in England, from engaging in property management work and from being involved in companies carrying out any such activity.
2. It was stated that the relevant offences committed by Mr Hussain were:
 - a. That between 1 May 2018 and 22 August 2018, Mr Hussain had control of or managed a House in Multiple Occupation, at 76 Cranmer Road, Forest Gate, London, E7 0JL (the subject property) which was required to be licenced under Part 2 of the Housing Act 2004 (the 2004 Act), but which was not licensed, contrary to section 72 of the 2004 Act.
 - b. That on 22 August 2018 and in respect of the subject property, Mr Hussain failed to comply with 4(1)(a) of the Management of Houses in Multiple Occupation (England) Regulations 2006 (the 2006 Regulations), in that all means of fire escape are to be kept free from obstruction to protect the occupiers from injury, in that there were shelves being used as storage in the ground floor hallway leading to a front door exit obstructing a hallway which was a means of escape, contrary to section 234 of the 2004 Act.
 - c. That on 22 August 2018 and in respect of the subject property, Mr Hussain failed to comply with 4(1)(a) of the 2006 Regulations, requiring the design conditions of the HMO are sufficient to protect the occupiers from injury, in that there was no fire door between the kitchen and the dining room which would allow a fire in the kitchen to accelerate through the ground floor at a faster rate, contrary to section 234 of the 2004 Act.
 - d. That on 22 August 2018 and in respect of the subject property, Mr Hussain failed to comply with 7(1)(a) of 2006 Regulations, in that he failed to comply with the condition of that licence to ensure that the common parts of the HMO were maintained in good and clean decorative repair, in that there were black mould spores to the first-floor bathroom ceiling, contrary to section 234 of the 2004 Act.
 - e. That on 22 August 2018 and in respect of the subject property, Mr Hussain failed to comply with 7(1)(b) of 2006 Regulations, in that he failed to comply with the condition of that licence to ensure that the common parts of the HMO were maintained in a safe and working condition, in that there was a cracked window on the ground floor which had not been repaired, contrary to section 234 of the 2004 Act.
 - f. That on 22 August 2018 and in respect of the subject property, Mr Hussain failed to comply with 7(1)(b) of 2006 Regulations, in that he failed to comply with the condition of that licence to ensure that the carpet to the stairs was

safely fixed and kept in good repair, in that the carpet to the stairs leading to the first floor from the ground floor was ill fitted on the top of one of the top treads, contrary to section 234 of the 2004 Act.

- g. That on 22 August 2018 and in respect of the subject property, Mr Hussain failed to comply with 7(1)(b) of 2006 Regulations, in that he failed to ensure that the garden of the HMO was kept safe and tidy condition in that it contained a three-piece sofa, a washing machine/dryer and a large glass pane encouraging the harbouring of vermin, contrary to section 234 of the 2004 Act.
3. The memorandum of entries shows the relevant convictions at the East London Magistrates Court as at 1 October 2021. The details are as set out in paragraph 2 above total fine was £10,000 plus costs of £2,963 and a victim surcharge of £170. He was convicted of all the offences 1 October 2021 [**A54-61**].
4. The current application was dated 31 May 2022 and received by the Tribunal on the same date. Directions were initially issued on 21 July 2022 and amended on 4 August 2022. Those set out the timetable for the parties to prepare and for a hearing on 30 November 2022.
5. There were various Notices of Intent to apply for a Banning Order, as required by section 15 of the 2016 Act, which sought to prevent the Respondent from letting housing in England, engaging in English letting agency work, engaging in English property management work or doing two or more of those things. These Notices were given to the Respondent at various addresses but were essential in the same format. The Notices were dated 29 March 2022 and set out the reasons for the application and stated that the length of the Banning Orders being applied for was 5 years. The Notices gave 28 days beginning with the date the notice was given for any representations to be made. The Notices are from [**A145**] in the bundle.
6. On 7 April 2022 Messrs Addison & Khan Solicitors submitted written representations on behalf of the Respondent in response to the Notices of Intent. These are detailed in the Respondent's case below. Newham sent a letter in response to the representations on 20 April 2022 and on 31 May 2022 submitted the application to the Tribunal.
7. The draft Banning Order sought is at **Reply88**.

Statutory Provisions and Guidance

8. The statutory provisions relating to Banning Orders are contained within Chapter 2 of Part 2 of the 2016 Act and, to the extent relevant, are set out in Appendix 2 to this decision.
9. In summary, a local housing authority (LHA) may apply to this Tribunal for a Banning Order against a person who has been convicted of a Banning Order offence and who was a residential landlord or a property agent at the time the offence was committed.

10. Section 14 of the 2016 Act provides that a Banning Order means an order banning a person from:
 - (a) letting housing in England;
 - (b) engaging in English letting agency work;
 - (c) engaging in English property management work; or
 - (d) doing two or more of those things.

11. Section 15 requires the LHA to give the person a notice of intended proceedings before applying for a Banning Order:
 - (a) informing the person that the authority is proposing to apply for a Banning Order and explaining why;
 - (b) stating the length of each proposed ban; and
 - (c) inviting the person to make representations within a period specified in the notice of not less than 28 days.

12. The LHA must consider any representations made during that notice period and must wait until the notice period has ended before applying for a Banning Order. 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.

13. Section 16 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; and
 - (d) the likely effect of the Banning Order on the person and anyone else who may be affected by the order.

14. Section 17 provides that a ban must last at least 12 months but may contain exceptions to the ban for some or all of the period to which the ban relates. The exceptions may also be subject to conditions. In addition, a person who is subject to a Banning Order that includes a ban on letting may not make an unauthorised transfer of an estate in land to a prohibited person. Nor can a banned person hold an HMO licence or a licence under Part 3 of the Housing Act 2004 in respect of a house. In addition, an HMO licence or Part 3 licence must be revoked if a Banning Order is made against the licence holder. Interim and final management orders may be made

in cases where a Banning Order has been made and a property has been let in breach of the Banning Order.

15. Section 14(3) defines a “Banning Order offence” as an offence of a description specified in regulations made by the Secretary of State. The relevant regulations are the Housing and Planning Act 2016 (Banning Order Offences) Regulations 2018 (“the 2018 Regulations”) which sets out the Banning Order offences in the Schedule to the Regulations. The 2018 Regulations only apply to offences committed after the coming into force of the regulations, on 6th April 2018.
16. For the purposes of this application, the following offences, in Item 3 of the Schedule, constitute Banning Order offences, unless the sentence imposed on the person convicted of the offence is an absolute discharge or a conditional discharge:
 - (a) offences in relation to licensing of Houses in Multiple Occupation under section 72(1), (2) and (3) Housing Act 2004; and
 - (b) offences in relation to failure to comply with management regulations in respect of Houses in Multiple Occupation under s.234(3) Housing Act 2004.
17. The Tribunal has also had consideration to the guidance from MHCLG entitled Banning Order Offences under the Housing and Planning Act 2016 - Guidance for Local Housing Authorities, published in 2018 [MHCLG Guidance].

Hearing and Preliminary Issues.

18. The hearing on 30 November 2022 was attended by Mr Underwood as counsel for the Applicant, Mr Dan Myers the Planning Enforcement Manager, Ms Julie Cannard the Private Housing Team Leader, Ms Chloe Selwood the Principal Planner and Ms Linda Brown a Private Housing EHP (Environmental Health Practitioner). The Respondent, Mr Jahangir Hussain attended and was represented by Mr Bryant of counsel.
19. Although this case was originally listed for half a day, it was agreed that due to the number of witnesses, the Tribunal would sit for the whole day. The hearing subsequently finished just before 5:00 pm. The parties were invited to make written submissions on the issue of the terms of any order, should the Tribunal make such an Order.
20. At the start of the hearing there was an application from the Applicant for the admission of late evidence. This was the statement of Ms Cannard that addressed some of the matters raised in Mr Hussain’s statement. It was stated to be uncontroversial and included information regarding the licensing designation, which was not an issue between the parties but provided the Tribunal with the relevant information. The other documents go to Mr Hussain’s credibility, when he states that he is not aware of any complaints and in relation to his credibility, resources and experience with regard to his property portfolio. In response Mr Bryant submitted

that the Respondent was not aware of any complaints and there is no witness to cross examine and that the Respondent would be unable to defend himself. The late evidence was sent to the Respondent on 23 November 2022. In response Mr Underwood stated that as to the extent the evidence is hearsay, that would go to the weight given to the evidence and was not a reason to exclude it. Also, that the Respondent would have the opportunity to cross examine Ms Cannard and for his case to put forward. After a short break the Tribunal decided to allow the late evidence. The Respondent had had the additional documents for a week prior to the hearing, and in respect of the evidence of any complaints, the parties could make submissions about what weight should be placed on that evidence and the other documents relate to matters of which the Respondent has knowledge and could be dealt with at the hearing.

21. The second preliminary matter was in regard to the nature of the spent convictions. When the application was made on 31 May 2022 the convictions were unspent. However, they became spent on 30 September 2022.
22. The Applicant's position is that it cannot be the intention of Parliament to exclude such evidence of the convictions when hearing an application for a Banning Order. The non-statutory MHCLG Guidance at paragraph 3.4 states that '*A spent conviction should not be taken into account when determining whether to apply for and/or the make a banning order*'. None of the convictions were spent when Newham decided to make the application. It is the Applicant's position that justice could not be done unless the Tribunal admits the evidence in relation to the convictions and that the Tribunal should admit the evidence in accordance with section 7(3) of the Rehabilitation of Offenders Act 1974 (the 1974 Act). The case of Hussain v Waltham Forest LBC [2020] EWCA Civ 1539 supports this principle. The convictions were recently spent, and it would not be in the interest of justice to exclude this evidence. Neither the offences nor the circumstances in which they were committed are subject to the protection of section 4 of the 1974 Act. As section 20 of the 2016 Act envisaged situations when convictions had been spent, then Parliament had the issue of spent convictions in mind and the statute would have explicitly excluded the making of Banning Orders if convictions had been spent. Section 20 (4) should not be used to imply that a Banning Order could only be made on the basis of an unspent conviction.
23. Mr Bryant submits that the Tribunal should not take into account the convictions and should not make a Banning Order. A pre-condition to making a Banning Order under section 15 of the 2016 Act is that the Respondent "has been convicted". But those convictions were spent after 30 September 2022. It is for the Applicant to show at the hearing that there was a conviction for a Banning Order offence. Section 4 (1) of the 1974 Act provides that a person is "a rehabilitated person" if the conviction is spent and so the Respondent should be treated as a person neither having committed nor been convicted of a Banning Order offence. By section 4(1)(a) no evidence shall be admissible to prove that a person has committed or been convicted of an offence once it is spent. Mr Bryant considers Hussain v Waltham Forrest can be distinguished from the current case on the basis that the local authority was not obliged to prove the conviction but chose to do so.

24. It is accepted that the Tribunal may admit evidence under section 7(3) if justice cannot be done except by admitting the evidence. However, the Respondent's position is that justice can be done by declining to admit the evidence for the following reasons. Whilst not binding, the Tribunal should give weight to the MHCLG Guidance. It is clear that the Government thought it was unjust for spent convictions to be taken into account in making any Banning Order. This is supported by section 20(4) of the 2016 Act that sets out that if a conviction is spent then the Tribunal may vary or revoke a Banning Order. As such a Banning Order cannot be made once a conviction is spent as once made, the Respondent may immediately apply to have the Banning Order revoked. Under section 15(6) of the 2016 Act, the Applicant had six months from 1 October 2021 to give the Respondent a Notice of Intended Proceedings and as the Applicant waited until 29 March 2022, it took the risk that the convictions would be spent by the time the matter was heard. The offences took place in 2018 and that the offences are now 'stale'. The Respondent's evidence is that he has taken steps to and has "*proactively reorganised the management structure of my properties to ensure that the reasons behind my 2021 convictions are not repeated*" and as such he has improved his behaviour.
25. As accepted by both parties the MHCLG Guidance is non-statutory. Whilst the Tribunal have taken it into account, we do not consider it to be a tool of interpretation of the 2016 Act. Given the steps that need to be taken by a Local Authority in proceeding with a Banning Order and the length of time before any matter could come before a Tribunal for determination, it would seem extraordinary that convictions that were spent at the time of a hearing could not be taken into account. We consider that section 20 sits alone and describes a scenario when a conviction is unspent at the time of making a Banning Order but subsequently becomes spent. We do not agree that section 20 implies that the convictions need to be unspent at the time of making the Banning Order. It is accepted that in contrast to Hussain v Waltham Forest, in this case one of the 'ingredients' of section 16 of the 2016 Act is that the Respondent, is a person who has been convicted of a Banning Order offence. However, we consider that the crucial part about whether the fact that the Respondent has been convicted can be admitted is dealt with by section 7(3) of the 1974 Act. The Tribunal is a judicial authority and by section 7(3) is satisfied that for justice to be done in our consideration of this application for a Banning Order, we need to know about Mr Hussain's convictions. Therefore, we admit the evidence relating to the convictions that were spent on 30 September 2022. However, the fact that the convictions are spent is a factor we take into account when making our determination below.

Issues for the Tribunal

26. Subject to the second preliminary point, the Respondent has accepted that Newham has complied with section 15 of the 2016 Act; that the Respondent has been convicted of Banning Order offences and that the Respondent was a residential landlord or property agent at the time the offences were committed. Therefore, the issues for the Tribunal are whether the Tribunal should exercise its discretion under

section 16 of the 2016 Act to make a Banning Order and if so what Banning Order should it make?

Applicant's case

27. The Applicant called Ms Cannard, Ms Brown and Ms Selwood to give evidence. All are employed by the London Borough of Newham.
28. Ms Cannard is the Private Housing Team Leader and made three witness statements. The first at **A37** is dated 15 September 2022, the second is at **Reply2** and is dated 26 October 2022 and the third is in the **AB** and is dated 23 November 2022.
29. It was explained that following an inspection of the subject property on 22 August 2018 it was identified that Mr Hussain had committed a number of offences under the 2004 Act and the 2006 Regulations. Due to the serious nature of the offences and because there had been a previous Financial Penalty against Mr Hussain, it was decided to prosecute. He was found guilty of seven offences on 1 October 2021. Newham had consideration of the MHCLG Guidance and decided to proceed with the Banning Order for the several reasons. In respect of the seriousness of the offences, despite telling the Magistrates Court that he was on a low income, he was fined £10,000, an indication of the seriousness of the offences. Ms Cannard had searched the Rogue Landlord and Agent Checker in respect of Mr Hussain and also SUL Associates Limited (SUL). She found that the Respondent had received Financial Penalty Orders in relation to 70 Chestnut Avenue on 17 October 2017 for £5,000 **[A63]** and also for the same property on 11 June 2019 for £10,000 **[A69]**. He was the sole director of SUL and during his appointment, SUL was issued Financial Penalty Orders for £5,000 on 17 October 2017 **[A76]** and for £10,000 on 11 June 2019 **[A87]**. Ms Cannard confirmed that on 13 September 2022, she had checked about the payment of the Financial Penalties made against Mr Hussain and SUL an no payment had been made. There were also Financial Penalty Orders made against Mr Hussain and SUL on 24 August 2017 in relation to 34 Avenue Road **[AB50]**.
30. With regards to the harm caused to tenants, Ms Cannard's evidence was that the offences that were the subject to the convictions related to Houses in Multiple Occupation (HMOs) and that these are properties that are often occupied by the most vulnerable groups in society and there is a need to ensure standards are maintained by a licensing scheme. Ms Cannard went through the various breaches of the 2006 Regulations to suggest how such breaches could have health and safety implications and could result in harm to occupiers. Matters were listed including escape from fire and fire safety and black mould spores to the bathroom ceiling, which can impact on respiratory problems; these being serious matters.
31. As to the punishment of the offender and as a deterrent both to the Respondent and others, it is suggested that a Banning Order for five years would be a severe sanction but it is a suitable punishment given that Mr Hussain had been given Financial Penalties that had not been paid and that he continued to offend. It is said that the

Banning Order would deter Mr Hussain from repeating the offences and that it would also be a deterrent to other rogue landlords.

32. In March 2022 and then September 2022 Ms Cannard had carried out searches against Mr Hussain at Companies House and found that he had involvement with many companies [**A48 onwards**]. This included SUL (under company registration number 07062609) which is now dissolved but was involved with the management of the subject property at the time the offences were committed. He is secretary of Sul Associates Ltd (company number 13587458); the sole director of QAJ Management Limited, a director of Sul Associates (Management) Limited, of and Plaistow Broadway Associates Ltd and the sole director of Jahangir HUSSAIN Ltd. Ms Cannard had undertaken a search of a case management database in relation to licensing matters and several properties with which the Respondent seems to be associated (in excess of 15 properties) [**A113 onwards**]. Ms Cannard also carried out a Land Registry search and she listed 12 properties which Mr Hussain either owned in his own name or were owned by companies to which he was associated, or he was a co-owner [**A118 onwards**]. This includes the freehold interest in the subject property. Mr Hussain also has a beneficial interest in 606-608 Barking Road, E13 9YJ [**A142**]. However, in the third statement from Ms Cannard and as a response to Mr Hussain's statement it was stated that further searches were made of the Land Registry on 21 November 2022. That search revealed Mr Hussain owned the following interests:

- a. The freehold of 93 Hamlets Way, E3 4TU, which contains 9 flats, but there are no leasehold titles registered against this property;
- b. 125-127 Cannon Street, E1 2LX is owned by the Respondent and Shahana Hussain, who is believed to be the Respondent's wife.;
- c. 269 Stepney Way, E1 3DH is owned by Mr Hussain but is subject to an 80-year lease, and Mr Hussain is the beneficiary of the lease. Under title number 449174 for 269 Stepney Way also includes 269A and 271 Stepney Way. It is suggested that there are possibly eight flats at the property and photographs at [**AB88-89**] show numerous doorbells;
- d. The freehold interest in 176 Bow Common Lane, E3 4HH;
- e. The freehold interest in 65 Monmouth Road E6 3QU, also
- f. The Land Registry search also revealed that Shahana Hussain has an interest in three properties:
 - 125-127 Cannon Street Road;
 - Flat 9, Lawless House, E14 0ET and
 - 64 Chestnut Avenue, E7 0JH.

33. Dealing with the Respondent's position that he was not aware of any complaints from individual tenants against him, it is stated that Newham had received several complaints. These were made either directly to Newham or by Councilors. The details are provided at [**AB106 onwards**]. Details are also provided of a site visit on 28 September 2021 at the subject property by Newham employees and a meeting with Mr Hussain. It is stated that Mr Hussain would not allow access to the property and was reluctant to confirm the number of occupiers. At **AB98** are details of a complaint in July 2021 in relation to 76 Cranmer Road.

34. Ms Cannard states that she does not believe that Mr Hussain resides at 606 Barking Road but can only say that she is not sure. She provided evidence from a licensing database that the address given in 2019 for Mr Hussain in relation to a HMO licence was 68 Chestnut Avenue. She provided a photograph of 606 Barking Road **[Reply24]** that shows a shuttered commercial unit on the ground floor with some accommodation on the first floor. The selective licence at **[Reply8]** would be unnecessary if he lived at that property as it would be exempt from licensing. She had carried out a search on the National Anti-Fraud Network (NAFN) on 25 October 2022 and that showed that the address Mr Hussain was using was 68 Chestnut Avenue and had applied for insurance and mortgages using that address. It was stated that there were no entries for the 606 Barking Road address **[Reply25]**. One problem that had arisen was that Mr Hussain had provided a number of different addresses including a Jersey address in respect to the Magistrates Court proceedings.
35. Although an application for a licence in respect of 76 Cranmer Road was made in May 2018, there were a number of deficiencies in the application and the application fee was not paid. Newham eventually granted a licence on 15 August 2019 to SUL Associates Limited (SUL) **[Reply57]**. The licence was revoked on 4 November 2021 as SUL was dissolved in March 2021 **[Reply69]**. It was accepted that the licence was granted at the time as there had not been any convictions against Mr Hussain at that time. It was also acknowledged that SUL was granted a licence after three Financial Penalties.
36. Ms Cannard stated that the convictions arising from the breach of the HMO Management Regulations were not administrative errors. At the time of the offences were committed Mr Hussain was a director of SUL **[Reply78]**.
37. Ms Cannard suggested that because of Mr Hussain's agreement with SUL (at a period when he was a sole Director) that he was involved in the day to day running and management of properties **[R27]**. At **[R100]** is a lease between Mr Hussain as the owner and Su88on Robert Enterprises Limited (Su88on) relating to the subject property. The registered office for Su88on is in a property of which Mr Hussain jointly holds the freehold **[A109 and A136]**. Also, neither RS Enterprises Limited and SR Enterprises Limited **[R108-118]** have Company House records. In respect of Mr Hussain's bank account exhibited at R137-140 there is no rental income showing for his property portfolio of at least 12 properties – but this figure was subsequently amended. It is suggested that the lack of any rental credits and the failure to provide bank account details/payment arrangement in a tenancy agreement could be taken as a way to avoid taxes on rental income and to carry out illegal evictions as there is no proof of rental payment. There was a suspicion that Mr Hussain was using the name James Hunt as a pseudo name.
38. Ms Brown is a Senior Environmental Health Practitioner, and her witness statement is at **A240**. Ms Brown explains that she inspected 76 Cranmer Road on 22 August 2018 and found the evidence of the relevant offences being committed. Mr Hussain was convicted on 1 October 2021. Ms Brown stated that she attended the proceedings in the Magistrates Court and that Mr Hussain stated that he resided in Jersey. She was unable to hear the actual address and was unable to get a transcript. Mr Bryant

put it to her that Mr Hussain did not give an address in Jersey, but Ms Brown was sure that he did.

39. Ms Selwood is a Principal Planner, in the Planning Enforcement Team and is employed by Newham.

40. Ms Selwood explained her involvement in this case, as the Planning Enforcement Team had taken formal enforcement action against Mr Hussain in relation to three properties. Four Enforcement Notices had been served and had not been complied with. The failure to comply with an Enforcement Notice is a criminal offence. The allegations contained in the four notices are summarised below:

- a. *The erection of a roof extension without planning permission at 63 Chestnut Avenue.* The Enforcement Notice was served on 13 October 2017 and set out the required steps to be undertaken by three months beginning with the day on which the Notice was served. Mr Hussain had appealed, but the appeal was dismissed. The period for compliance then became 4 September 2018. There was correspondence between the parties and a site inspection took place on 10 November 2021. The inspection revealed the loft extension was still in situ. As such Ms Selwood concludes that the requirements of the Notice have not been met. Mr Bryant put to Ms Selwood that in respect of her site visit on 10 November 2021, Mr Hussain had obtained the relevant planning consents by Permitted Development Rights. Ms Selwood replied that what was built was not Permitted Development. This matter is going to trial in January 2023.
- b. *A material change of use to a mixed use comprising a brothel and short term lets without planning permission at 63 Chestnut Avenue.* The Enforcement Notice was served on 23 February 2018 and set out various steps for compliance with the Notice. The period for compliance was one month beginning with the day on which the Notice was served. Mr Hussain appealed the Notice, but the appeal was dismissed. At a site visit on 20 March 2019 Mr Hussain stated that the short term lets use had ceased. However, it was observed that the use of the accommodation constituted a HMO and the property did not have the appropriate planning permission. In July 2019 Mr Hussain asserted the property was not being used for short term lettings and was being advertised with a letting agency. However, an investigation showed the property was being offered on a nightly basis. At an inspection on 22 January 2020 several occupiers stated that they had booked their visit on Booking.com for a short stay. The Respondent's planning consultant had emailed on 18 February 2021 to say it had been let to a single family for 18 months. This was denied given the previous inspections. On an inspection on 10 November 2021 the property manager, Mr M Parvez stated that the property was let out on as an 'AirBnB style' at £30-£40 per night. It is concluded that there had been no compliance with the Enforcement Notice. When it was put to her that there was a single family at the property, Ms Selwood stated that on her inspection it was not occupied by a family, but in the manner described by Mr Parvez. She had heard a conversation on the phone between Mr Parvez and Mr Hussain. Mr Hussain had raised his voice

and she heard him say that the Local Authority were not to be permitted access.

- c. *A rear extension with a canopy without planning permission at 34 Avenue Road.* The Enforcement Notice was issued on 7 September 2018 and set out the matters that required compliance by three months from the date beginning with the Notice. The Notice was served on Mr Hussain and there was no appeal and therefore came into effect on 7 October 2018 and the compliance works were required to be completed by 10 January 2019. The Respondent's agent confirmed that the Notice had not been complied with on 7 February 2019 but that it was the intention to apply for a certificate of lawful development. On a visit on 10 November 2021, Ms Selwood was refused access. On a further visit on 25 January 2022 Ms Selwood inspected and noted that the extension and canopy were still in place. Accordingly, it is considered there has been no compliance with the Enforcement Notice. This matter is going to trial in January 2023.
 - d. *A material change of use into a House in Multiple Occupation without planning permission at the subject property.* An Enforcement Notice was issued on 20 September 2019 and required compliance with various steps. The period of compliance was three months beginning with the day the Notice took effect. Mr Hussain did not appeal, and the compliance steps were required to have been carried out by 20 January 2020. Ms Selwood attended the property but was unable to inspect on 10 November 2021 and spoke to Mr Hussain by phone who confirmed the property was in use as an HMO. There was a description about how the property was used from one of the occupiers. Ms Selwood formed the view that the use of the property as a HMO had not ceased. Again, this matter is going to trial in January 2023. Ms Selwood stated that it was not the occupiers who were unhappy with the inspection, but Mr Hussain. The early evening inspections had been carried out with the police as their presence helped to secure access.
41. Newham made submissions in respect of the Tribunal's discretion to make a Banning Order. On 22 August 2018, Newham observed several breaches of the 2006 Regulations. These included serious fire safety matters in a HMO occupied by at least five people, including two children. In Aytan v Moore [2022] UKUT 27 (LC) fire safety precaution deficiencies were regarded by the Upper Tribunal as a very serious matter. The circumstances were not a mere administrative error as the failure to licence deprived Newham of the opportunity to identify and seek the remedy of the fire safety deficiencies. Mr Hussain's failure to understand the gravity of the matters is cause for concern. There have been complaints about the subject property and Mr Hussain and SUL Associates Limited have been subject to numerous Financial Penalty Orders.
42. Newham decided not to prosecute Mr Hussain for other Banning Order offences, but he had been penalised under section 249A Housing Act 2004 with Financial Penalties. Although Mr Hussain states that he was not a director of SUL Associates Limited on 11 June 2019, he was a director of the company at the time of the offence.

The total sums due against Mr Hussain and SUL Associates Limited from 2017 to 2019 was £32,000. The fact that neither Mr Hussain or SUL Associates Limited, that has now been dissolved, have paid the penalties is a demonstration of Mr Hussain's regard to the licensing scheme and its regulatory authority. Mr Hussain did not challenge the Financial Penalties but his position is that others are responsible. Mr Hussain is also presently prosecuted for various planning offences and the complaints received from his tenants and neighbours again shows his disregard to the licensing scheme and its regulatory authority.

43. Because of the penalties and convictions against Mr Hussain, he is listed on the Database of Rogue Landlords and Property Agents.
44. The next issue is the likely effect of the Banning Order on Mr Hussain and others. The Tribunal are invited by the Applicant to treat Mr Hussain's comments about 'substantial financial hardship' and the need to go onto state benefits with caution. Mr Hussain has not provided any evidence of his rental income, net profits and his bank statement. According to the Applicant his veracity and credibility are seriously open to doubt. His witness statement with a statement of truth included a statement that misstated the extent of his property interests in London. Ms Cannard had indicated a portfolio of 13 properties, but the evidence is that he has interests in another 17 properties. Given the extent of the portfolio it is unlikely that Mr Hussain, his family and extended family will be homeless. It is noted that two of the properties at 54 Cranmer and 176 Bow Common Lane are not subject to any mortgage.
45. In respect of the beneficial effect of any Banning Order on tenants and Newham would be considerable. Mr Hussain, as a landlord with disregard for the health and safety of his tenants, would be removed from the marketplace.
46. It is accepted that Mr Hussain has carried out work to the subject property, but the extent and quality of that work has not been tested. But that should not outweigh the seriousness of the offences, Mr Hussain's contempt for the Financial Penalties, the ongoing concerns for the management and condition of his properties. A Banning Order for a period of five years is sought as Mr Hussain has a history of failing to comply with management regulations with the first Financial Penalty in 2017 and then 2018 and 2019 and the 2018 offences being the subject of the convictions.
47. In the Applicant's submission, the Tribunal should not accept that Mr Hussain has learnt his lesson. He was evasive about where he lived, and his oral evidence was that he lived at both 606 Barking Road and 68 Chestnut Avenue but it is clear that his address is 68 Chestnut Avenue. He was evasive about the property in Jersey and about his wife's circumstances. He was not clear about his income as although Mr Hussain stated that he received £1,000 per month per property, this is the net rent as he has a rent-to-rent business model. In essence he is not a credible witness. Mr Hussain's claim that he will be on state benefits is nonsense as he has a small property empire, and some properties are unencumbered by mortgages. Mr Hussain could have provided a full disclosure of these financial circumstances, but he had not done so.

48. In respect of the terms of the Banning Order the draft Order is a **[Reply87]**. The period sought is five years, but it is accepted that it should take effect six months from the making of the Order to give tenants notice and to allow Mr Hussain to make suitable administrative arrangements. As to the management of the portfolio and the terms of any Banning Order, the Tribunal received further submissions from both the Applicant and the Respondent. Newham's position is that although a Banning Order would mean that Mr Hussain and any person or company associated with him could not be involved in letting and management work, that would not prevent the properties being let. It is open to the Tribunal to exercise its discretion under section 17(3) of the 2016 Act and enable the Respondent to engage a trustworthy, fit and proper third-party agent to manage his residential properties and hold any necessary licences for him. Newham would not oppose the making of such conditions. In respect of the wording of any conditions, Newham propose that Mr Hussain is banned from letting houses in England *“save by – and only by – engaging the services of a Propertymark SafeAgent and/or UK Association of Letting Agents (UKALA) accredited letting agent (a) with whom neither he nor any company with which he is concerned is either involved or associated and (b) whose engagement is first approved by the Council in writing, prior to engagement or to Mr Hussain entering into any contract concerning their engagement.”*

Respondent's Case:

49. On 6 April 2022 Addison & Khan solicitors submitted written representations on behalf of Mr Hussain in response to the Notices of Intent. It was stated that a HMO Licence was granted for 76 Cranmer Road to Mr Ivan Vrhnjak from 2012 to December 2017. They asserted that Mr Hussain's current lessee, SUL Associates Limited, became aware of the need for a new licence and applied for a licence on 15 March 2018 and this was eventually granted on 15 August 2019. Steps were taken to remedy the licensing problem as soon as Mr Hussain was aware of the problem. The convictions in the Magistrates' Court were disappointing but the court accepted Mr Hussain's mitigation that his former agent had failed in their responsibilities and obligations. There is an agreed payment plan for the fines and steps taken to ensure future compliance with all management regulations. It is stated that an application for a Banning Order is unreasonably harsh and unfounded for what was essentially administrative breaches of the management regulations.

50. Mr Hussain had provided a witness statement at R1 and gave evidence at the hearing. He explained that he had previously been a healthcare manager and had a postgraduate management qualification in chemical manufacturing with management in 2018. He relied on those properties listed in Ms Cannard's first witness statement as the extent of his property portfolio. Due to family and professional commitments he states he that grants leases to management companies or letting agencies and does not manage the properties himself. He considers that the application for a Banning Order is unduly harsh.

51. At the time of the offences Mr Hussain had granted a lease to SUL Associates Limited (07062609) from 1 May 2018 to 22 August 2018 and it managed the property at the

time of the offences. The HMO licence on the subject property expired on 31 December 2017 and SUL applied for another licence on 15 March 2018 and this was granted on 15 August 2019. Mr Hussain acknowledges that he was a director of SUL at the relevant time, but contends that the conviction arose due to an administrative error by SUL and Ivan Vrhnjak and Ivolo Vasiliev, who appear to have been employed by SUL as property managers. In the Magistrates' Court he was found to be partially responsible along with SUL and the above-named property managers. All the allegations in relation to the Respondent's co-operation with Newham has been dismissed by the Magistrates Court. The average fine for the seven offences was £1,428.57.

52. Mr Hussain states that he has now terminated all the agreements with the previous agents and companies and proactively re-arranged his affairs so that the reasons behind the convictions are not repeated. He has entered into a contract with Su88on Robert Enterprises Limited for a period of four years from 1 June 2021 **[R101]** in respect of 76 Cranmer Road. It was acknowledged that Mr Hussain had not mentioned health and safety matters in his revised management scheme. The subject property has been refurbished at a cost of £100,000 and has new fire doors, fire alarm, kitchen and bathrooms and an environmentally friendly heating system.
53. Mr Hussain's position is that he has no recollection of the 2017 and 2019 Financial Penalties. 70 Chestnut Avenue is occupied by his parents and extended family members. A property licence was obtained for the basement flat at this property on 18 April 2019 and so was licensed at all material times. As he was not a director of SUL after 1 November 2018 and therefore the use of a Financial Penalty against SUL was unreasonable.
54. In respect of the issue of potential harm to occupiers, Mr Husain acknowledges the need for proper regulation of HMOs. He states that the six offences relate to the property not having a HMO licence at the relevant time but this was for a short period of time and a licence was granted on 15 August 2019. He considers the Applicant's suggestion of him posing a risk of harm to tenants is unreasonable and disproportionate. He is not aware of any complaints made against him.
55. Mr Hussain is paying the fines and various payments by monthly installments. He accepts that irresponsible landlords should be prosecuted. However, in his case there had been breaches of trust, whilst he was engaged with serious medical crises for himself and his elderly parents. He denies any repeat offending and he is in the process of defending the recent planning prosecutions.
56. In respect of his personal circumstances, he states that he is engaged in voluntary unpaid work, and he is solely reliant on the rental income from his properties and the income he generates from leases and management companies. The inability to rent his properties would cause hardship and all the properties are subject to mortgages and he is solely responsible for servicing the mortgages. He has mortgages of over £400,000 and he has a loan to remedy the problems at the subject property, that he would be unable to pay. He supports his parents, who have poor health, his wife and children including his eldest son who is at university and two younger sons who are

12 and 14 years old. His parents, his family and himself would need to go on state benefits as he would be unable to work. He states that he suffers from sciatic nerve and back disc problems.

57. As he employs management companies or third-party lessees to manage his portfolio this creates employment and financial opportunities for a significant number of people. Newly recruited staff would lose jobs and training opportunities; builders would become jobless.
58. Attached to his witness statement are copies of several leases. The periods of these leases do not provide a clear chronology of interests in the subject property. However, in relation to the time the offences were committed there is a lease of the subject property from Mr Hussain to SUL Associates Limited, of which he is the sole director **[R28]**. Then there is a sublease (AST) granted by SUL Associates Limited to Ivaylo Vasilev **[R22]**. There is also another lease/management agreement between SUL Associates Limited and Ivaylo Vasilev **[R84]**. Also provided are several invoices **[R102-107]** **[R120-136]** and **[R145-R147]** and some credit card statements. Some of these appear to be duplicates. The total expenditure shown on these invoices in in the region of £9,000 to £12,000. There is also correspondence from a mortgage provider regarding the subject property and indicating the interest for 2021/22 of £18,469.76 **[R142]**.
59. In his evidence in chief, Mr Hussain stated that he lived at 606 Barking Road. He confirmed that he was a director of various companies including SUL Associates Limited but gave that up on 15 August 2019 and there was a delay in updating Companies House. He stated he went back to further education. He said that James Hunt was a member of his staff and he has never used the name himself.
60. In respect of the planning matters Mr Hussain stated that 63 Chestnut Avenue had building control approval, but that Newham was pursuing the wrong person. All the evidence on this case will be present at the January 2023 hearing. He confirmed that Mr Parvez lived at this property. However, he was unable to remember a call with Mr Parvez when the police visited the property.
61. Mr Hussain had purchased 34 Avenue Road in 2004 and the rear extension had been built without planning permission, but this had been missed by several surveyors and banks involved in the purchase. However, he can't remember having a conversation with a young man in relation to an inspection at this property. He also does not recall a conversation with Ms Selwood in relation to the subject property but remembered speaking to the tenant, but he then contradicted himself saying that he did not remember the conversation with the tenant but spoke to the manager. He stated that staff from Newham turned up without appointments and that was frightening for the tenants. He confirmed that his parents and brother lived at 34 Avenue Road. However, in cross examination Mr Underwood took Mr Hussain to his witness statement where he had stated that his parents and extended family lived at 70 Chestnut Avenue. Mr Hussain explanation is that he has a large family and they can stay at 34 Avenue Road, 68 or 70 Chestnut Avenue and this was a cultural matter. His position was that 34 Avenue Road was their home but that they moved around.

62. Mr Hussain did not recall giving his address as being in Jersey when he was in the Magistrate's Court. He stated he traveled a lot and stated that he has a property in Jersey. The address is 41 Gloucester Street, St Helier, and he holds the freehold interest. The property is occupied by a managing agent and he receives £600 per month for the property. He purchased the property 15/16 years ago and can't remember the cost and does not know what it is worth now.
63. Regarding his home address, Mr Hussain maintains he lives at 606 Barking Road and as he does a lot of travelling, he keeps his professional and his private lives separate. His wife and children live at 68 Chestnut Avenue. After repeated questioning Mr Hussain stated that he goes to 68 Chestnut Avenue and lives there 'sometimes'. He was evasive about the extent to which he lives at 606 Barking Road saying that he visits/lives there sometimes. Mr Hussain was referred to a database for mortgage and insurance applications where Mr Hussain has made applications using 68 Chestnut Avenue as his home address. Mr Hussain gave no clear explanation as to why he used 68 Chestnut Avenue as his home address on these applications. He confirmed that he had HMO licenses for 34 Avenue Road, 68 and 70 Chestnut Avenue and 606-608 Barking Road. His position was that the four properties are occupied as family homes but he has a licence for all of them.
64. He confirmed he owned the freehold of 63 and 68 Chestnut Avenue, but 63 was under the management of Mr Parvez. There was enforcement action in relation to 63 Chestnut Avenue as detailed in paragraph 39(b) above. It was put to him that it was still being used for short term lets in November 2021. Mr Hussain did not think that was true. He denied a phone call with Mr Perez when he refused access to Newham and the police.
65. In relation to his property portfolio, it was put to Mr Hussain that he accepted the list of properties that Ms Cannard had put in her witness statement. He was asked why he had not included the Jersey property. Mr Hussain response was that he did not see how that would benefit his tenants. It was put to him that details of several properties in Ms Cannard's additional statement as listed in paragraph 31 above should have been provided to the Tribunal. Mr Hussain denied any knowledge of 65 Monmouth Road but the Office Copy entry at **[AB94]** show Mr Hussain acquired the freehold in 2020. He did not really answer why he had not given frank disclosure about his property portfolio. He was unable to provide clear details of the rental income from his portfolio. But he suggested the average rent was £1,000 per calendar month, but he stated he did not get £15,000 to £20,000. He did not obtain the full rent and some were longer leases. It was put that 54 Cranmer Road **[A128]**, 176 Bow Common Lane and 135 High Street Plaistow **[A142]** are owned without mortgages. Mr Hussain made no comment. He explained that there was a trust in respect of 15 Robert Sutton House **[A124]** and his father gave him the property for £1. His father is called Ali Akbor, but it is a common name and that his father is not a director of Su88on Robert Enterprises Limited (Su88on). He did know the Mr Akbor who is a director of Su88on. Mr Hussain confirmed that he was a beneficiary of a trust in relation to 606 Barking Road. Mr Underwood had listed all the properties

included in Ms Cannard's witness statements and Mr Hussain confirmed that there are no other properties.

66. Mr Hussain accepted that he was a director of QAJ Management Limited **[A107]** and that they owned 229 Katherine's Dock **[A140]** and 2c Alnwick Road **[A122]**. Mr Hussain confirmed his wife's maiden name was Sharma Uddin but he did not know if she owned Flat 9, Lawless House, Baizley Street **[AB92]**. His wife is a teacher and is currently working but he does not know how much she earns and he does not ask. He knows nothing about her joint ownership of 64 Chestnut Avenue **[AB97]**.
67. In respect of his current management arrangements, Mr Hussain entered into a lease/management agreement with Su88on. When asked about the experience of Su88on, Mr Hussain said that his staff speak to him and he ensures that they comply with matters. It was put to him that the company had no experience in letting and management. Mr Hussain's response is that there are no complaints. However, there is an AST granted to four tenants **[A109]** which contains punitive charges on default on the part of the tenant **[A118]**. Mr Hussain was asked why he placed the management of the property into an agent who adopted such punitive terms. He said that he did not grant the AST. He accepts the charges are punitive, but the tenants were told to get legal advice before entering into the tenancy, so the terms were accepted by the tenants. Mr Hussain's position is that he was pro-active in re-organising his portfolio to ensure that he had a robust management system. In an email to Newham, Mr Hussain stated that the subject property had four self-contained rooms with seven adults and two children **[Reply47]** but with a contradiction as to whether or not they were related. He did not accept the comments made by Ms Selwood **[Reply 95]** that stated Mr Hussain had told the tenant to refuse Newham access to the property and that there were nine unrelated people living at the property. However at the hearing he stated there were no children at the property but he was referred to a witness statement of Ms Pavlina Borisova Borisova **[A254]** that states she shares the room at 76 Cranmer Road with her daughter and photographs that show that a child seems to be occupying the room **[A323]**.
68. On the issue of complaints, Mr Hussain said that there is a management system, and he is not aware of any complaints and any are resolved quickly. Looking at a file note on Newham's case management system **[AB120]** there is reference of a Mr Miah a maintenance manager with SUL, Mr Hussain denied knowing a Mr Miah. He accepted there was an Improvement Notice and that all actions were undertaken. In respect of a complaint **[AB114]** (64 Chestnut Avenue – owned by Mr Hussain's wife), Mr Hussain denied it was a reference to himself and that he was not aware of the complaint. There was a complaint about 229 Katherine Road, a property owned by QAJ Management Limited **[AB111]**. Mr Hussain was asked if he knew of the complaint, he said he had been informed but the issue had been resolved. He stated that his witness statement was correct as he did the necessary work. He denied the complaints were from his tenants as the complaint came from a tenant of the leaseholder but in this case there were threats by the tenant with a hammer. Mr Hussain denies a complaint made in 2021 in respect of the subject property **[AB98]** as there were no tenants at the property. He considers that this is a malicious communication from a neighbour.

69. Regarding the non-payment of the Financial Penalties, Mr Hussain stated that he was not a Director of SUL and as the freeholder he should not be liable. It should be Mr Vaslilev who should pay this sum. He acknowledged that he was the director of Sul in 2016-7. But as the leaseholder had contracted to look after the property, then they should be liable. Mr Hussain considered himself to be a soft target and the issue of fines was not going to assist tenants.
70. As to the position that the Banning Order is unreasonable and disproportionate, Mr Hussain acknowledged that the offences were serious but it was a technical error as he trusted Ivan Vaslilev. All problems were remedied swiftly.
71. In his closing submissions, Mr Bryant put Mr Hussain forward as a truthful witness in that he acknowledged when he could not remember and that he was trying to assist. He was emotional at times but this was not a trite attempt to garner sympathy. Mr Hussain is trying to put matters right so that he will not be in the same position. Although the Financial Penalties and fines are unpaid this is due to Mr Hussain feeling that he has been treated unfairly. He had not revealed the full extent of his property portfolio as he did not think it was relevant to this matter. He has now put in robust measures in place to ensure compliance with the law.
72. The Respondent accepts that Newham have complied with the requirements of section 15 of the 2016 Act; that the Respondent has been convicted of a banning order offence or offences and that the Respondent was a residential landlord or property agent at the time. So the issue for the Tribunal is whether it should make a Banning Order having consideration to the provisions of section 16 of the 2016 Act.
73. In respect of the seriousness of the offences of which the Respondent has been convicted, it is accepted the offences are serious. Indeed, all the offences under the HMO regulations are serious. The question is how serious? In Mr Bryant's submission the level of the fine for the seven offences suggests that the magistrates did not consider the offences to be the most serious. In respect of the HMO licence it is submitted the property had been licensed up to 2017 and that the Respondent had delegated his duty for renewing the licence. The application was made in March 2018 but the Respondent's agent did not deal with the deficiencies in the application but this was remedied by SUL Associates Limited in April 2019 and the licence was granted in August 2019.
74. As to the condition of the property, although there was an obstruction of the fire escapes, the means of escape was not entirely obstructed. Accordingly, it was said that this is not the most serious of offences. There was a lack of a fire door between the kitchen and living room, but there is no evidence to suggest that there were not appropriate fire doors elsewhere. The mould on the bathroom ceiling is a health hazard but the occupiers stated that this had not impacted on their health. The cause of the mould is unclear and may be due to condensation from a lack of ventilation and this may not be an issue for the Respondent. The cracked window does not appear to be a very serious matter. The ill-fitting carpet at the top of the stairs is serious but not the most imaginable. Two of the tenants did not consider that the

condition of the garden had affected their health and that suggests that this offence is not the most serious.

75. Further, it was stressed that the Respondent has no other previous convictions. It is accepted that the Respondent is on the database of rogue landlords. There has been an explanation why the Financial Penalties were unpaid, but those had occurred some time ago. Mr Bryant posed the question, could Mr Hussain be said to be a rogue landlord today?
76. Mr Hussain has set out how a Banning Order would impact him and his family. Two of the tenants in the subject property do not consider that they are in danger with the conditions in the house. We should not put much weight to the log of complaints as Mr Hussain's position is that one or more may be from malicious neighbours.
77. With regard to the exercise of the Tribunal's discretion, there is no evidence that there is current dissatisfaction with the new management arrangements. He has taken steps to improve 76 Cranmer Road. If no Banning Order is made, Mr Hussain is aware that Newham will have him under close surveillance and he will act accordingly. Taken all these matters together, the Tribunal should not make a Banning Order.
78. The Respondent made further submissions on the terms of any Banning Order if one was to be made. He maintained his position that no Banning Order should be made. However, if a Banning Order was made, then the Respondent agrees with the Applicant that the Tribunal has discretion under section 17(3) to make exceptions to any prohibitions. He also accepts the proposed wording set out by the Applicant and produced in paragraph 47 above.

Discussion and Determination:

79. Before a Tribunal makes a Banning Order, it must be satisfied that a number of conditions have been met. Those conditions are:
 - a. that the Respondent has been convicted of a banning order offence;
 - b. that the Respondent is a 'residential landlord' or a 'property agent' at the time the offence was committed; and
 - c. that the Local Housing Authority has complied with Section 15 of 2016 Act, this required:
 - i. give the Respondent a notice of intended proceedings that the LHA proposes to apply for a banning Order and the reasons why;
 - ii. inform the Respondent of the proposed length of the proposed ban;
 - iii. invite the Respondent to make representations within a period, being not less than 28 days;
 - iv. the LHA to consider any representations made under iii above;
 - v. the LHA to wait until the period detailed in iii before applying for a Banning Order and
 - vi. that the notice of intended proceedings under i, may not be given after the end of six months beginning with the day on which the Respondent was convicted of the offence to which the notice applies.

80. The Respondent has very fairly accepted that Newham has complied with section 15 of the 2016 Act; that the Respondent has been convicted of Banning Order offences and that the Respondent was a residential landlord or property agent at the time the offences were committed.
81. Paragraph 3.3 of the MHCLG Guidance addresses the factors that a LHA should consider when deciding whether to apply for a Banning Order, and when deciding on the proposed duration of any order. The statutory requirements in s.16(4) are listed and in relation to section 16(4)(d) when considering the likely effect of an Order on the person who is to be the subject of the order, and anyone else that may be affected by it, regard should be had to:
- (a) harm caused to the tenant;
 - (b) punishment of the offender;
 - (c) deterring the offender from repeating the offence; and
 - (d) deterring others from committing similar offences.
82. S16(4) sets out the factors which we **must** take into account. However, we do not consider this is an exclusive list and we consider that the Tribunal may take other factors into account. The Guidance is not binding but the Tribunal may take the Guidance into account and indeed the Tribunal attaches significant weight to its contents. Paragraph 1.7 of the Guidance states 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”*.
83. Under 16(4)(a) the seriousness of the offence of which the person has been convicted must be considered. We accept that at the time of making this decision the relevant convictions are spent. However, we are satisfied that the seriousness of the offences committed by Mr Hussain is sufficient for the making of a Banning Order. In making that finding we consider that the holding of a HMO licence is important to ensure that proper standards are maintained in a property that could be occupied by vulnerable tenants. The consequence of failing to hold a licence means that the conditions within a multi-let property cannot be properly monitored and proper safe standards are not maintained, and this is a serious matter. Whilst we appreciate that the breaches of the 2006 Regulations could have been rectified very easily, this does not detract from the seriousness of the issues. Healthy and safety matters and particular issues relating to fire safety are very important in multi-let properties. We are mindful of and are in full agreement with the Upper Tribunal in Aytan v Moore that fire safety precaution deficiencies are a very serious matter.
84. It is accepted that sections 16(4)(b) does not apply, as there were no previous convictions and prior to the current events.

85. With regard to section 16(4) (c), the Respondent accepts that he has been included on the Database of Rogue Landlords and Property Agents.
86. By section 16(4)(d) we must consider the impact of any Banning Order on the Respondent and upon anyone else who may be affected by the Order. We do not accept the evidence of Mr Hussain about the impact of the Banning Order on himself, his immediate family and wider family. We did not find Mr Hussain to be a convincing witness. He failed to answer questions in a frank manner. He obfuscated in relation to his living arrangements and his property holdings. He stated that he had mortgages of £400,000 and had spent £100,000 on improving 76 Cranmer Road. However, he did not provide full financial information as to his income and assets. He provided some bills relating to the improvement of 76 Cranmer Road, but those totalled £9,000 to £12,000 and was well short of his claimed £100,000 expenditure. He has interests in about 30 properties, excluding any properties outside London, such as his property in Jersey. This is a significant portfolio, and we understand that some of these properties are unencumbered. We do not accept that there was any or any sufficient evidence to substantiate the submission that he and his family would be forced to rely on state benefits. The Tribunal recognises that the making of an order would obviously have an adverse effect upon Mr Hussain. The extent of that adverse impact would depend upon the duration and the extent of any ban imposed. However, provided the terms of the order are proportionate, the fact that it would necessarily deprive Mr Hussain 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.
87. We find that Mr Hussain and SUL Associated Limited's failure to pay the Financial Penalties shows a disregard to the principles of Newham's licensing policies. Although Mr Hussain argues that he should not have been issued with the Financial Penalties, he did not appeal those penalties and as such he is liable for the payment of those sums. We do not consider him to be contrite. Whilst he has said that he has put new management measures in place for the management of his portfolio we are not persuaded that there was evidence to demonstrate that Su88on Robert Enterprises Limited (Su88on), who has limited experience in residential management, is an appropriate organisation to take over the management of properties including HMO dwellings. We do find that after Su88on had taken over the management of the subject property [R101] in June 2021, there had been a complaint about the management of the property [AB98] in July 2021.
88. The potential deterrent and punishment effect on the Respondent and the deterrent effect on other landlords/agents are factors that should be considered. We do not consider that the Tribunal is limited to the factors set out in the 2016 Act and may consider other aspects that are relevant to the property or the conduct of the Respondent. In that regard we note from Ms Selwood's evidence that there have been various breaches of planning legislation in relation to 63, Chestnut Avenue, 34, Avenue Road and 76 Cranmer Road. It is appreciated that these breaches of the Enforcement Notices are to be heard in January 2023.

89. We acknowledge that Banning Orders should be reserved for the most serious offenders but overall, we consider that this is such a case and as such we make a Banning Order in respect of the Respondent.
90. The Tribunal now goes onto determine the terms in which a Banning Order should be made. It is, of course, appropriate also to have regard to the proposals set out in the Notices of Intent served by Newham, but the Tribunal is not constrained by those proposals. Newham seek to ban the Respondent from residential letting, letting agency work and property management work. In consideration of all the circumstances of this case, we agree with the Applicant's position that Mr Hussain should be banned from doing all three things.
91. As to the length of the order we note that the minimum period is 12 months but there is no upper limit. There may be circumstances when the relevant behaviour is so extreme that it would merit a significantly long or permanent ban on the activities. In this case Newham has proposed a ban for five years.
92. The proposal of five years needs to be measured against a scale of a minimum period of 12 months and a lifetime ban. In this case given the nature of the offences, the conduct of Mr Hussain when Newham attempted to inspect 76 Cranmer Road, the opaque portfolio arrangements and the lack of frankness by the Respondent, and the lack of contrition as demonstrated by the failure of pay the Financial Penalties, we consider that a period of more than twelve months is appropriate. However, we do not think that the five -year period sought by the Applicant is proportionate. We think the issues are serious, but not as serious as some of the Banning Orders that have been made. In our determination, we consider that a period of three years is sufficient to ensure that the Banning Order will have the appropriate punitive effect on the Respondent. It is also important that the Orders have a real deterrent effect on other landlords.

We note that the Applicant accepts that there needs to be a period of time before these Orders come into operation. A period to allow the Respondents to take the proper steps to conclude their housing management business and make appropriate arrangements is desirable. We consider that the period of six months suggested by Newham is sufficient in the circumstances. As to any exception to the prohibition, we note the concession made by the Respondent if a Banning Order was to be made. Therefore we incorporate the following wording into the Order: "Mr Hussain is prohibited from letting houses in England save by – and only by – engaging the services of a Propertymark, SafeAgent and/or UK Association of Letting Agents (UKALA) accredited letting agent (a) with whom neither he nor any company with which he is concerned is either involved or associated and (b) whose engagement is first approved by the Council in writing, prior to engagement or to Mr Hussain entering into any contract concerning their engagement."

93. In conclusion, the Tribunal makes a Banning Order for a period of three years from the date set out in the Order. The Banning Order is attached to these reasons.

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).



**First-tier Tribunal
(Property Chamber)
Residential Property**

Tribunal Reference: LON/00BB/HBA/2022/0001

Applicant: London Borough of Newham

Respondent: Mr Jahangir Hussain

**BANNING ORDER
(Section 16 of the Housing and Planning Act 2016)**

By this Order, JAHANGIR HUSSAIN of the following addresses:

- 606, Barking Road, Plaistow, London, E13 9JY;
- The Gatehouse, 453 Cranbrook Road, Ilford, Essex, IG2 6EW;
- 2, Queens Road, Bounds Green, London, N11 2QU;
- 68, Chestnut Avenue, Forest Gate, London, E7 0JJ;
- 34 Avenue Road, Forest Gate, London, E7 0LD;
- 76, Cranmer Road, Forest Gate, London, E7 0JL and
- 229, Katharine Road, London, E6 1BU

IS BANNED from:

1. Letting housing in England;
2. Engaging in English letting agency work;
3. Engaging in English property management work; or
4. Doing two or more of those things.

Mr Hussain **IS ALSO BANNED** from being involved in any body corporate that carries out any of the above activities. He may not act as an officer of such a body corporate or directly or indirectly take part in, or be concerned in, its management.

This ban takes effect six months from the date of this Banning Order, namely they will last for a period of **THREE YEARS** from 16 August 2023.

The ban on letting housing in England is subject to the following:

Mr Hussain is prohibited from letting housing in England save by – and only by – engaging the services of a Propertymark, SafeAgent and/or UK Association of Letting Agents (UKALA) accredited letting agent (a) with whom neither he nor any company with which he is concerned is either involved or associated and (b) whose engagement is first approved by the Council in writing, prior to engagement or to Mr Hussain entering into any contract concerning their engagement

Signed: *H C Bowers*
Chair of the First-tier Tribunal
Date: 15 February 2023

NOTES:

- 1. A person who breaches a banning order commits an offence and is liable on summary conviction to imprisonment for a period not exceeding 51 weeks or to a fine or to both. Alternatively, a local housing authority may impose a financial penalty of up to £30,000 on a person whose conduct amounts to that offence.**
2. A person who is subject to a banning order that includes a ban on letting may not make an unauthorised transfer of an estate in land to a prohibited person. Any such transfer is void (see section 27 of the Housing and Planning Act 2016)
3. A breach of a banning order does not affect the validity or enforceability of any provision of a tenancy or other contract.

4. A person against whom a banning order is made may apply to the Tribunal for an order under section 20 of the Housing and Planning Act 2016 revoking or varying the order.
5. The expressions “English letting agency work” and “English property management work” have the meanings given to them by sections 54 and 55 of the Housing and Planning Act 2016 respectively.
6. The reasons for making this banning order are set out in a decision issued separately by the Tribunal.

SCHEDULE 1

Statutory Provisions

Housing and Planning Act 2016

Chapter 2 – Banning Orders

Banning Orders: key definitions

14. “Banning Order” and “Banning Order offence”

- (1) In this Part “Banning Order” means an order, made by the First-tier Tribunal, banning a person from-
 - (a) letting housing in England,
 - (b) engaging in English letting agency work,
 - (c) engaging in English property management work, or
 - (d) doing two or more of those things.
- (2)
- (3) In this Part “Banning Order offence” means an offence of a description specified in regulations made by the Secretary of State.

(4)

Imposition of Banning Orders

15. Application and notice of intended proceedings

(1) A local housing authority in England may apply for a Banning Order against a person who has been convicted of a Banning Order offence.

(2)

(3) Before applying for a Banning Order under subsection (1), the authority must give the person a notice of intended proceedings-

(a) informing the person that the authority is proposing to apply for a Banning Order and explaining why,

(b) stating the length of each proposed ban, and

(c) inviting the person to make representations within a period specified in the notice of not less than 28 days (“the notice period”).

(4) The authority must consider any representations made during the notice period.

(5) The authority must wait until the notice period has ended before applying for a Banning Order.

(6) A notice of intended proceedings may not be given after the end of the period of 6 months beginning with the day on which the person was convicted of the offence to which the notice relates.

16. Making a Banning Order

(1) The First-tier Tribunal may make a Banning Order against a person who-

(a) has been convicted of a Banning Order offence, and

(b) was a residential landlord or a property agent at the time the offence was committed (but see subsection (3)).

- (2) A Banning Order may only be made on an application by a local housing authority in England that has complied with section 15.
- (3)
- (4) 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, and
 - (d) the likely effect of the Banning Order on the person and anyone else who may be affected by the order.

17. Duration and effect of Banning Order

- (1) A Banning Order must specify the length of each ban imposed by the order.
- (2) A ban must last at least 12 months.
- (3) A Banning Order may contain exceptions to a ban for some or all of the period to which the ban relates and the exceptions may be subject to conditions.
- (4) A Banning Order may, for example, contain exceptions-
 - (a) to deal with cases where there are existing tenancies and the landlord does not have the power to bring them to an immediate end, or
 - (b) to allow letting agents to wind down current business.

18 Content of banning order: involvement in bodies corporate

- (c) (1) A banning order may include provision banning the person against whom it is made from being involved in any body corporate

that carries out an activity that the person is banned by the order from carrying out.

- (d) (2) For this purpose a person is “involved” in a body corporate if the person acts as an officer of the body corporate or directly or indirectly takes part in or is concerned in the management of the body corporate.