



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

Case Reference : CHI/00HB/HBB/2023/0001

Applicant : Ms Naomi Knapp

Representative : Henriques Griffiths LLP

Respondent : Bristol City Council
(Private Housing Team)

Representative : Kate Burnham-Davies

Type of application : **Application for a variation of a banning order – section 20(1) of the Housing and Planning Act 2016**

Tribunal Members : Regional Judge Whitney
Mr M Woodrow MRICS

Date of Hearing : 17 November 2023

Date of Decision : 7 December 2023

DECISION

BACKGROUND

1. The Tribunal received an application from the Applicant, under section 20(1) of the Housing and Planning Act 2016, for the variation of a banning order dated 16 August 2022.
2. The Applicant states that this is an urgent application as she will,
“..... need to take urgent steps to ensure compliance [sic] with the Banning Order and the Order itself has far reaching effects on her financial situation. An early determination of this application will ensure that these two matters can be dealt with efficiently.”
3. The Tribunal issued directions on 3rd October 2023 including listing for hearing. Following a case management application received from the Applicants solicitors on 1st November 2023 an extension of time for compliance with directions was granted to the Applicant.
4. The Tribunal had before it a hearing bundle, skeleton argument on behalf of the Respondents and bundle of authorities. References in [] are to pdf pages within that bundle.

HEARING

5. The hearing took place remotely by video. Ms Knapp appeared in person with Mr Bigwood and Ms Lawrence present with her throughout the hearing. Mr Calzavara of counsel appeared for the Respondent Council as well as Ms Burnham-Davies, solicitor and Mr Mallinson, Private Housing Manager.
6. The hearing was recorded and we precis the most salient parts of the hearing.
7. At the start of the hearing Ms Knapp clarified that she was inviting the Tribunal to make various orders:
 - Extend time by 8 months to allow her to comply with the Banning Order already made;
 - Partially revoke the Banning Order so that she could grant leases to entities such as Housing Associations, Letting Agents, AirBnB lets;
 - Revoke the order;
 - Partially revoke the order so that it did not apply to any properties within her portfolio which do not require a licence.
8. Ms Knapp explained that she learnt on 10th August 2023 that her application seeking leave to appeal to the Court of Appeal from the Upper Tribunal had been refused. At that point she says she tried to obtain advice as to whether she could renew her application for leave

to appeal directly to the Court of Appeal and until the time for so doing had expired her routes of appeal had not been exhausted. She stated in August it was difficult to obtain legal support due to people being on holiday.

9. Ms Knapp explained she had not placed properties on the market or issued Notices to her tenants until her rights of appeal were exhausted as she did not wish to stress her tenants out. She accepted that before the banning order had been made her income was in the region of £35,000 per month before expenses. She suggested that her income for November and December of this year was likely to result in her making a loss as some tenants had stopped making payments of rent and she has properties empty.
10. Ms Knapp suggests that it takes 4 to 6 months to sell a Property and an auction will typically take at least 6 weeks. She had made enquiries of auction houses but understood the next auction available to her to place her homes for sale would be in February 2024. She had no documentary evidence of this. She had during the week of the hearing agreed a sale of one property but did not expect this to complete prior to January 2024.
11. Ms Knapp explained she had identified people to whom she could transfer those Properties which do not have a mortgage outstanding. These are people known to her but more difficult for those properties subject to mortgages. Currently her mortgages total about £2,500,000.
12. Ms Knapp stated she had been told a number of her properties are suitable to be let via AirBnB. She would like to transfer these houses to be run by what she described as AirBnB companies. Alternatively she would transfer the properties to other persons who would be the “active landlord”. She believes the Tribunal could grant such exceptions. She did not want to have properties empty whilst they were on the market.
13. Ms Knapp suggested that the Banning Order could now be revoked on the basis that the convictions which formed the basis of the Banning Order are now spent.
14. Ms Knapp was then cross examined by Mr Calzavara.
15. Ms Knapp accepted she had been advised throughout and was still obtaining legal advice.
16. Ms Knapp was questioned as to the number of residential properties she owned. She indicated that she believed she owned some with family members. She thought there were 31 properties, but she was

not 100% sure. She does own some commercial properties as well as residential. On further questioning she then stated that the figure was 29 residential properties. She believed about 10 had been empty since July 2023.

17. She is expecting a number of further properties to become empty on 1st December 2023.
18. She referred to having a number of properties on the market with Connells and various properties on the market with an online auction. She stated she was aware that she could sell with tenants in situ but had been told, given her rents are low, there will not be many buyers.
19. She stated she had been mindful of her tenants feelings and did not want to upset tenants by putting homes on the market whilst still occupied.
20. Ms Knapp indicated she was told by several firms of solicitors that trusts were not appropriate for her. She stated she had not been advised about a blind trust. She stated she had been advised AirBnB lets were commercial and not residential.
21. The Tribunal reminded Ms Knapp that she did not need to answer questions which may incriminate her.
22. She explained she was aware that if she was letting property after 1st December 2023 this would be a criminal offence.
23. She mentioned that a Mr Matthew Smith moved in on 8th August 2023 [101]. She thought this had been done by a deed of assignment but it seems the other student occupants did this. She was aware that one of the agents she uses, RentRight had allowed someone to enter a property by a deed of assignment but she stated she knew nothing about this until she was asked to repay a deposit. She stated the agent deals with these matters.
24. At this point the Tribunal had a short adjournment. Ms Knapp was warned she must not discuss her evidence with anyone.
25. Upon resumption the Tribunal again warned Ms Knapp she did not need to answer any question which may incriminate her.
26. Ms Knapp explained the notices to her tenants were served at the end of September or 1st October 2023. No notices had previously been served. She stated she was more concerned over the delays in the court service than the cost of having empty properties. She did state she was worried about the financial implications.

27. The Tribunal then questioned Ms Knapp.
28. She explained she had been extremely busy. She was not sure why Mr Auld (her barrister at the original proceedings) had suggested that 6 months was the period she would require to deal with her existing tenancies to comply with any banning order made.
29. Ms Knapp explained she could not understand why she had to have property empty when she would still be required to pay council tax and any mortgage payments due on the properties.
30. Mr Calzavara then opened the case for the Respondent and called Mr Mallinson. He confirmed his statement was true [110-125].
31. Ms Knapp cross examined Mr Mallinson.
32. He did not agree extra time should be given to her. He did not believe she had taken the situation seriously and was now doing too little too late.
33. Mr Mallinson stated that the Council are still seeing issues in respect of her properties being some two years after the original prosecutions. He referred to Russell Road [113]. He stated that the council is investigating breaches of the banning order already committed by Ms Knapp.
34. On questioning by the Tribunal Mr Mallinson stated that in his opinion Ms Knapp has no clear plan. She had ideas as to what she wanted to do but there was no substance to the same or explanations as to why she required a further 8 months. She was simply trying to delay the inevitable criminal liability for breaching the Banning Order.
35. Mr Calzavara then made closing submissions.
36. He suggested that in fact the Tribunal had no power to vary the banning order pursuant to Section 20 of the Housing and Planning Act 2016 since at the date the Banning Order was made on 16 August 2022, the convictions were already spent and so the Tribunal had already considered this. In his submission no further application could be made pursuant to Section 20(4) of the Act.
37. If we were not with him on this, in his submission, no further time should be given. Ms Knapp had taken no preparatory or substantial steps until she served notice at the end of September/beginning of October 2023. She has chosen to leave everything until the last moment.

38. The Tribunal then adjourned for lunch. Upon resumption Mr Calzavara completed his submissions.
39. He suggested that there was no proper evidence of a plan or who the third parties referred to by Ms Knapp are.
40. Mr Calzavara suggested that if any variation is made it should be to extend the length of the ban given the time Ms Knapp has already had due to her appeal to the Upper Tribunal. He suggested the term of the ban should be extended by 9 months so that practically the ban is for the whole of a 5 year period.
41. In reply Ms Knapp suggested that she had already lost a lot and suffered a great deal of stress. She suggested her convictions were minor and she was a law abiding citizen.
42. At the conclusion the Tribunal adjourned to make its determination. It then announced its decision orally and stated these written reasons would follow.

DECISION

43. The Tribunal determined that it does have jurisdiction to consider a variation of the original Banning Order dated 16th August 2022.
44. The Tribunal declined to vary the Banning Order in any way sought by either the Applicant or the Respondent.

REASONS

45. We record that, as indicated to the parties at the hearing, we are not considering the question of the making of the Banning Order itself. The order was made on 16th August 2022. The Applicant did appeal that decision but her appeal was rejected by the Upper Tribunal pursuant to its decision dated 24th May 2023. That decision did extend the time for the Applicant to ensure compliance in respect of any existing tenancies setting a deadline for compliance of 1st December 2023.
46. The Applicant did seek leave to appeal to the Court of Appeal and that application was rejected on 26th July 2023. We note that the application for leave to appeal did not include any stay of the current Banning Order and the Applicant has not pursued her application for leave to appeal to the Court of Appeal directly. Her appeal rights in respect of the making of the Banning Order have been exhausted and it is not the purpose of a variation order to look afresh at the making of the original order.

47. Mr Calzavara suggested that Section 20(4) of the Housing and Planning Act 2016 did not give us jurisdiction to vary the order made. His submission that as at the time of the making of the Order the convictions were already spent, the Tribunal had already considered these circumstances. We do not accept his submission. We find that Section 20 of the 2016 Act allows a person subject to a Banning Order, once the convictions are spent to apply to vary the order made even if the convictions were spent at the time of the making of the actual Order. It is for the person seeking to vary the order to make out suitable grounds and not use the application simply as a challenge to the making of the original banning order.
48. We are satisfied that the convictions which were the subject of the Banning Order are now spent. This appeared to be common ground between the parties. We are satisfied that Section 20(4) allows us to consider varying or revoking the order. Further we are satisfied as set out in Section 20(5) of the 2016 Act we can add new exceptions, or vary the banned activities, the length of ban or vary existing exceptions. In that way we are satisfied that we can and should consider both parties submissions.
49. We turn to deal with Ms Knapp's application to vary. We found her evidence at times to be chaotic in approach and at other times less than candid. Ms Knapp has had throughout the benefit of specialist legal advice from solicitors and counsel notwithstanding that she represented herself at the hearing.
50. We agree with the evidence of Mr Mallinson that the application appears to be too little too late. There was no plan, simply vague suggestions as to what steps Mrs Knapp may now take given the deadline for her compliance was approaching. Simply because it appeared inevitable she would not be able to comply with the deadline did not, in our judgment, entitle her to an extension.
51. The original period of time for compliance was that proposed by her instructed counsel. The Banning Order was made on 16th August 2022. Whilst we accept it was stayed pending the outcome of her appeal, the decision in that regard was given on 24th May 2023. The final paragraph of that determination stated:
- “ It should not be assumed by the [Applicant] that the full effect of the banning order will be postponed beyond 1st December 2023.”
52. Ms Knapp, on her own case, accepts she learnt of the decision of the Upper Tribunal to refuse her permission to appeal further on 10th August 2023 although the decision is dated 26th July 2023. Notwithstanding this, she still took no real steps to end the tenancies until the end of September 2023. We only have her word as to what notices were served and on whom. Her application, whilst referring

to a Schedule of tenancies [21] does not attach the same. We were provided with no details of the tenancies or even copies of agreements, section 21 notices or the like. On her own evidence Ms Knapp was unclear as to actually how many residential properties she owned.

53. We would have expected a prudent individual to have issued section 21 notices as soon as the decision of the Upper Tribunal was issued in May 2023. If she had done so those notices would in all likelihood not have expired until she knew the outcome of her application for leave to appeal. Even if Ms Knapp had issued section 21 notices once she became aware of the refusal of her application for leave to appeal the Upper Tribunal decision on 10th August 2023 by the date of the hearing those notices would have become effective and she could have commenced any required court proceedings for possession. She herself accepted that court proceedings may be protracted.
54. This had not happened. It was suggested by the Respondent that her motivation was her financial position and not that of her tenants. We agree with the Respondents. We are satisfied on the evidence we heard the motivation for Ms Knapp was to ensure her income from the properties continued as long as possible.
55. We heard from Ms Knapp that she was considering various other schemes. Again we agree with the Council that there was no substance to the same. Ms Knapp told us she had advice that a trust would not work. No evidence of any such advice was provided. There were in the bundle various documents purporting to relate to the sale of properties, some by private treaty and some by what was referred to as online auction. Again no full particulars and explanation as to exactly what steps had and were being undertaken were included within Ms Knapp's evidence.
56. Ms Knapp referred to arrangements with third parties. Copies of correspondence between her solicitors and the council were produced. However her evidence contained no copies of the proposed draft documentation to be entered into or evidence that parties were prepared to enter into agreements with her that would satisfy the arrangements she referred to. Ms Knapp said she could get such evidence but it was not in the hearing bundle.
57. Overall we were not satisfied on the basis of Ms Knapp's own evidence that she had taken the Banning Order made seriously or had undertaken proper steps to ensure compliance with same. There seemed to be little rhyme or reason as to why an 8 month further extension would ensure compliance. We are not satisfied that any of the revocations are appropriate. A Banning Order is a draconian measure designed to prevent rogue landlords continuing to let out property. We were not satisfied that Ms Knapp has learnt any lessons

from the making of the order and she does not seem to understand or accept that she is a rogue landlord whose behaviour was designed to be controlled by the making of a Banning Order.

58. We considered carefully everything within the bundle and Ms Knapp's oral evidence but decline to exercise our discretion on the facts of this case to make any variation or revocation as to the terms of the existing Banning Order and Ms Knapp must ensure full compliance by 1st December 2023 or it may be open to the Respondent to take further action.
59. We did consider whether we should extend the term as requested by the Respondent. We accept that we could do so. It is correct that the Upper Tribunal stayed the time for compliance with the order and in dismissing the appeal did allow Ms Knapp until the 1st December 2023 to comply in respect of tenancies in existence prior to the making of the Banning Order. Whilst it may be said that Ms Knapp has not felt the full effect of the Banning Order until a substantial time after the making of the original order, we are not persuaded on the basis of the evidence made that we should extend the term. We take account of the fact the Upper Tribunal did not consider they should extend the term. On balance we are satisfied that the terms of the original order should remain the same. That is not to say that if there are breaches these would not preclude the Respondent from making its own further application to extend the time for the current Order.

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.