



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

Case reference : **CAM/34UF/HBA/2024/0001**

Applicant : **West Northamptonshire Council**

Respondent : **Stephen John Cunningham**

Type of application : **Application for a Banning Order –
section 15 of the Housing and
Planning Act 2016 (“the 2016 Act”)**

Tribunal member(s) : **Regional Judge Wayte
Judge Morris**

Date of decision : **22 May 2024**

DECISION

Decision of the tribunal

The tribunal has decided to make a Banning Order for 36 months in the terms set out in the order sent to the parties with this decision. For the avoidance of doubt, the respondent may continue to take the income from his existing tenants for 24 months, provided he engage a reputable and unconnected professional letting agent to manage the properties on his behalf. That agent will be required to ensure the properties are vacant at the end of that period, meaning that for the final 12 months the Banning Order will be absolute.

The application

1. On 16 January 2024 the tribunal received an application from the applicant for a banning order against the respondent under section 15 of the 2016 Act. The application followed the respondent's plea of guilty on 19 January 2023 at Northampton Magistrates' Court to a number of banning order offences as set out in the Housing and Planning Act 2016 (Banning Order Offence) Regulations 2018 in respect of four separate properties. Those convictions resulted in a fine of £100,000 (£25,000 for each property). A Notice of Intent to apply for a banning order was served on the respondent on 3 May 2023.
2. Directions were issued on 22 January 2024. In the directions, the tribunal raised the issue that the convictions had all become spent under the Rehabilitation of Offenders Act 1974 on 18 January 2024 (12 months after conviction due to the penalty being a fine). With that in mind, evidence of the convictions could only be admitted if the tribunal made an order under section 7(3) of that Act. Both parties were referred to Hussain v London Borough of Newham [2023] UKUT 287 and asked to make their submissions in their case documents.
3. The applicant prepared a hearing bundle in accordance with those directions but the respondent failed to provide any bundle or statement in response, despite a chasing letter from the tribunal. In the circumstances, on 9 April 2024, Judge Wayte made an order under rule 9 of the Tribunal Procedure Rules 2013 that the respondent be barred from taking any further part in the proceedings. The order stated that although the respondent was barred from producing any statement of case or written evidence, including witness statements, he was permitted to attend the final hearing and cross-examine the applicant's witness(es) if he so wished. He would also be permitted to make verbal representations about the effect of any Banning Order.
4. Both parties attended the hearing on 15 May 2024, held at a hotel in Northampton. The applicant was represented by Susan Desfontaines, senior lawyer and their witness Christopher Stopford, Head of Private Sector Housing. The respondent represented himself.

The law

5. Sections 14-27 of the 2016 Act contain the provisions in respect of banning orders. In summary, a LHA may apply to the tribunal for a banning order against a person who has been convicted of a banning order offence and who was a residential landlord or property agent at the time the offence was committed.
6. Before applying for a banning order and within 6 months of the date of the conviction, the authority must give the person a notice of intended

proceedings. This notice must give the reasons for the application, state the length of the proposed ban and invite representations within a period of not less than 28 days (“the notice period”) (section 15(3) of the 2016 Act).

7. Since evidence of convictions is required to be taken into account by the tribunal, it is also important to consider the effect of the Rehabilitation of Offenders Act 1974. This states that convictions which result in a fine are “spent” after 12 months from the date of the conviction, whether or not the fine has been paid. A fine is the usual penalty for licensing offences which gives the conviction a short shelf life, particularly bearing in mind the process set out above. The MHCLG guidance states at paragraph 3.4 that “*A spent conviction should not be taken into account when determining whether to apply for and/or make a banning order*”.
8. The treatment of spent convictions in the context of HMO licensing was considered by the Upper Tribunal in Hussain v LB Waltham Forest [2019] UKUT 339 (LC), a decision upheld by the Court of Appeal [2020] EWCA Civ 1539. The Upper Tribunal found that on a proper construction of the 1974 Act the FTT may receive evidence of the conduct which resulted in a conviction, even if that conviction is now spent. Section 7(3) of the 1974 Act also allows a judicial authority to admit evidence of spent convictions if it is satisfied that justice cannot be done in the case without it. In Hussain v LB Newham [2023] UKUT 287 (LC), the Upper Tribunal upheld the FTT’s decision to allow such evidence in deciding whether to make a banning order in that case.
9. In deciding whether to make a banning order the tribunal must consider:- (a) the seriousness of the offence of which the person has been convicted, (b) any previous convictions that the person has for a banning order offence, (c) whether the person is or has at any time been included in the database of rogue landlords and property agents, and (d) the likely effect of the banning order on the person and anyone else who may be affected by the order (section 16(4) of the 2016 Act).
10. The effect of a banning order is severe, preventing a person from lawfully letting housing or engaging in letting agency or property management work in England. A banning order may also include provision banning the person from being involved in any company that carries out such an activity. Breaching a banning order is an offence and may also give rise to a financial penalty. A LHA must also enter the name of any person with a banning order in its rogue landlord database.
11. The government department responsible for housing regulation, now called the Department for Levelling Up, Housing and Communities, published guidance in respect of banning orders under its old name (MHCLG) in April 2018. It is good practice for a LHA to follow that

guidance and the tribunal may also take it into account when coming to its decision. That guidance states at paragraph 1.7 that banning orders are aimed at *“Rogue landlords who flout their legal obligations and rent out accommodation which is substandard. We expect banning orders to be used for the most serious offenders”*.

West Northamptonshire’s application

12. Ms Desfontaines started with the memorandum of conviction for the banning order offences, which related to four properties owned and let by the respondent at the time. The convictions were all dated 19 January 2023.
13. In respect of 93 St.Michael’s Road, Northampton NN1 3JT, the respondent pleaded guilty to: letting the property as a HMO without a licence; failure to ensure that all means of escape from fire within the HMO were kept free from obstruction and were maintained in good order and repair; failure to ensure any firefighting equipment and fire alarms were maintained in good order; failure to take all such measures as were reasonably required to protect the occupiers from injury; failure to maintain the common parts and failure to keep the internal structure, appliances and windows in good repair – 6 offences in total. The respondent was fined £25,000 for the licensing offence, with no separate penalty for the others, which were all offences under the Management of Houses in Multiple Occupation (England) Regulations 2006 (“the 2006 Regulations”).
14. In respect of 69 Allen Road, Northampton NN1 4NB, the respondent also pleaded guilty to letting the property as an HMO without a licence and 5 offences under the Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (England) Regulations 2007 (“the 2007 Regulations”), including two in relation to fire safety and one for unreasonably interrupting the gas or electricity supply. Again, he was fined £25,000 for the licensing offence with no separate penalty for the others.
15. In respect of 5 Gordon Street, Northampton NN2 6BY, the respondent pleaded guilty to a licensing offence and 5 offences under the 2006 Regulations, the same offences outlined in paragraph 11 above. Again, the respondent was fined £25,000 for the licensing offence with no separate penalty for the others.
16. Finally, in respect of Flat 15, St Marys Court, Northampton NN1 2SL, the respondent also pleaded guilty to a licensing offence and 2 other offences under the 2007 Regulations, including unreasonably causing the gas or electricity supply to be interrupted. Again, he was fined £25,000 for the licensing offence with no separate penalty for the others, making a total of £100,000 for 21 offences.

17. Following the sentencing hearing on 20 April 2023, the Notice of Intent was served on 3 May 2023, within 5 months of the conviction. It relied on the Memorandum of Conviction setting out the banning order offences and proposed a period of 5 years. It gave the respondent until 10 June 2023 to make representations. None were received.
18. In addition to the convictions, the applicant relied on further action taken against a separate property owned by the respondent: 57 St Michael's Road, Northampton. In particular, following an inspection and a decision that a Category 1 hazard existed due to a defective boiler, an Emergency Prohibition Order was issued on 9 January 2024.
19. Mr Stopford's witness statement set out further information in relation to the convictions and the action in respect of 57 St Michaels Road. The council had been unable to obtain any tenancy agreements in respect of the occupants of the respondent's properties but had obtained evidence of occupancy and evidence of ownership, which was not disputed by the respondent. He had served the Notice of Intent, which again was not disputed.
20. As at the date of Mr Stopford's statement (12 February 2024), the respondent no longer owned 5 Gordon Street or Flat 15, St Marys Court. 93 St Michaels Road and 69 Allen Road were still occupied by tenants, with no application for any HMO licences having been made by the respondent. Mr Stopford could not confirm the number of people in occupation of 93 St Michaels Road but understood that there were 3 occupants in 69 Allen Road from a conversation with an occupier at the property. He confirmed that the tenants had vacated 57 St Michaels Road by 31 January 2024.
21. At the hearing, Mr Stopford clarified that the applicant has had an additional licensing scheme in place for the area in which the respondent's properties are situated since January 2020 which expires on 31 January 2025. This requires a licence for all properties occupied by 3 or more people from 2 or more households and applies to properties converted into self-contained flats without building consent, such as 93 St Michaels Road.
22. He admitted that it had been the action in relation to 57 St Michaels Road that had prompted the council to issue the application for a banning order. Ms Desfontaines explained that the newly created council only formed its legal department in June 2023 and that had also led to the delay in making the application.
23. Ms Desfontaines submitted that the tribunal should make an order under section 7 of the Rehabilitation of Offenders Act 1974 to permit evidence of the convictions. That was supported by the Upper Tribunal in Hussain, where the fines were only £10,000. In this case, 21 offences had led to a fine of £100,000, indicating the most serious level of

culpability and the serious risk of harm to the occupants. She submitted that it cannot be right to allow the respondent to continue to be involved in the rental industry.

24. The terms of the banning order proposed by the applicant included the provision that the respondent shall engage a reputable and unconnected property agent to wind down and vacate all rental properties owned by him within a maximum 12-month period, with the banning order lasting 5 years. The draft order also requested details of all other rental property in England owned by the respondent.

Mr Cunningham's response

25. The respondent confirmed that he was paying the fine by instalments of £500 per month. His only income came from his tenants. Following the convictions, he had made sure that none of the properties were being occupied as HMOs and therefore he had no need to apply for a licence. In any event, his plan was to sell the properties within the next couple of years, having accepted that being a landlord was not for him.
26. He accepted that there were problems with 57 St Michaels Road and that property remained empty. He owned one further property which was rented to a family. He was happy to hand over all his properties to an agent before selling them.
27. He maintained that a banning order would be unfair in the circumstances. He was particularly worried about the council making a management order and taking the income, which would mean he would be unable to maintain his instalments for the fine.

The tribunal's decision

28. There are effectively four issues for the tribunal to decide:
 - (1) Whether the LHA have complied with the procedural requirements set out in section 15;
 - (2) Whether the respondent has been convicted of a banning order offence;
 - (3) Whether at the time the offence was committed the respondent was a residential landlord or a property agent (subject to the exception for officers of a company in section 15(3));
 - (4) Whether to make a banning order and what order to make, having regard to section 16(4) and the MHCLG Guidance.
29. The Notice of Intent referred to in paragraph 15 above clearly complied with the provisions of section 15 of the 2016 Act. The Notice was within 6 months of the date of conviction on 19 January 2023 and the application was not made until 16 January 2023, well after expiry of the period for representations. The tribunal is also satisfied that there is

ample evidence to support the fact that the respondent was a residential landlord. In any event, he does not deny that.

30. There is also no doubt that the respondent was convicted of a banning order offence: the Memorandum of Conviction lists 21 banning order offences in total. However, the delay in applying for the banning order meant that the banning order offences relied on in the Notice became spent under the 1974 Act shortly after the application was made. Having considered the evidence and both parties arguments, the tribunal is satisfied that justice cannot be done without admitting evidence of the convictions at Northampton Magistrates Court on 19 January 2024. Firstly, the application cannot proceed without that evidence. Secondly, the fact that further serious issues arose in respect of property rented by the respondent shows that the applicant was right to consider him a serious risk to his tenants. Thirdly, the fact that the respondent pleaded guilty to 21 offences and received a fine of £100,000 is further support for that argument. The applicant had no good reason for their delay in making the application but the other factors outweigh that failure in the judgement of this tribunal. In the circumstances, the remaining issue is whether to make a banning order and, if so, what order to make.
31. The first consideration is the seriousness of the banning order offence. It would have been helpful if the applicant's bundle had contained more of the prosecution case and in particular, some photographs illustrating the condition of the properties and details of the number of occupants. That said, this fine is the highest encountered by the tribunal from a magistrates' court and there are 21 offences in total, including offences in relation to fire safety and interference with gas or electricity supplies. In these circumstances, the tribunal considers that these are extremely serious offences.
32. It is clear that banning orders are aimed at the most serious offenders who rent out unsafe and substandard accommodation. The tribunal considers that the Memorandum of Conviction supports the applicant's case that all the respondent's properties were both unsafe and substandard. The issues at 57 St Michaels Road provide further evidence. The photographs in the bundle showing the disrepair of the boiler are extremely concerning. The PNC in the applicant's bundle does not show any previous convictions for banning order offences and no evidence of the respondent being included in the database of rogue landlords was drawn to our attention.
33. That leaves the issue of the likely effect of the banning order on the respondent and anyone else. The tribunal accepts the respondent's evidence that he is currently reliant on his rent to pay the instalments of his fine and that he intends to sell the properties within a couple of years. That said, the extreme seriousness of the offences justifies a banning order in this case. The tribunal will allow the respondent two years to wind down the business, provided he engages a professional letting agent to manage the properties. Regarding the respondent's

concern that the Council may make a management order, pursuant to section 102(7A) of the Housing Act 2004, the Council may make a management order in respect of any property let in breach of a banning order, but there is a right of appeal to this tribunal under section 123 and Schedule 6 Part 3 of the 2004 Act against the making of the order. Therefore, provided the Banning Order is complied with and the agent engaged lets the properties in accordance with the legislation there would be no reason for such an order. Given the age of the offences, which were said to have been committed in March 2020, the tribunal considers that 3 years is sufficient length for the banning order, by which time the respondent has submitted the properties would be sold in any event.

Name: Judge Wayte

Date: 22 May 2024

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).