



FIRST-TIER TRIBUNAL

**PROPERTY CHAMBER (RESIDENTIAL
PROPERTY)**

Case Reference : **CAM/34UF/HBA/2024/0600-0604**

**HMCTS code (paper,
video, audio):** : **V: CVPREMOTE**

Properties : **Various**

Applicant : **West Northamptonshire Council**

Representative : **Ms S Desfontaines**

(1) Mr D Viconschi

(2) Mr K Cernihs

Respondents : **(3) Mr V Oblivoks**

(4) Mr A Cugurovs

(5) Mr M Borozdins

Representative :

Type of Application : **Application by Local Authority for a
Banning Order**

Tribunal Members : **Judge S Brilliant**

Mr G Smith MRICS

**Date and Venue of
Hearing** : **03 April 2025**
Cambridge County Court, 197 East

Road, Cambridge CB1 1BA

07 May 2025

Date of decision:

DECISION

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Determination

1. We make banning orders against (1) Mr D Viconschi, (2) Mr K Cernihs, (3) Mr V Oblivoks and (4) Mr A Cugurovs, pursuant to s.16 Housing and Planning Act 2016

(“the 2016 Act”).

2. For the reasons set out below, we do not make a banning order against Mr M Borozdins.

3. In view of the gravity of the offences, the duration of the banning orders as required to be specified by s.17(1) of the 2016 Act is, in all cases, a ban for life.

Introduction: what are banning orders?

4. In these proceedings the applicant local authority (“WNC”) is asking the Tribunal to make banning orders against the five individual respondents identified above.

5. Banning orders can only be made in respect of banning order offences.

6. We must begin by explaining what both banning orders and banning order offences are. To do so we need to look in turn at:

(a) The 2016 Act, which defines what banning orders are and the procedures to be followed by the local authority in obtaining one from the Tribunal (paragraphs 8 – 13 below) ;

(b) The Housing and Planning Act 2016 (Banning Order Offences) Regulations 2018 (“the 2018 Regulations”) which list the offences which are banning order offences (paragraphs 14 – 16 below);

(c) The Housing Act 2004 (“the 2004 Act”) which contains the banning order offences relevant to these proceedings (paragraphs 17 - 20 below);

(d) The Management of Houses in Multiple Occupation (England) Regulations 2006 (“the 2006 Regulations”), a breach of which also constitutes a banning order offence relevant to these proceedings (paragraph 21 below).

7. Before turning to these in detail, it is important to note that the effect of s.25 and schedule 2 to the 2016 Act is that a banned person may not hold an HMO licence. This means that someone whose livelihood has depended on renting out houses in multiple occupation (“HMOs”) will, following the banning order, be deprived of that livelihood. It is therefore a draconian power which should not be used lightly.

The 2016 Act

8. s. 14 of the 2016 Act provides as follows:

(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) See also section 18 (which enables a banning order to include a ban on involvement in certain bodies corporate).

(3) In this Part “banning order offence” means an offence of a description specified in regulations made by the Secretary of State...

9. s. 15 of the 2016 Act provides as follows:

(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...

(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** (our emphasis) of the offence to which the notice relates.*

10. s.16 of the 2016 Act provides as follows:

(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 ...

(2) A banning order may only be made on an application by a local housing authority in England that has complied with section 15...

(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.

11. s.17 of the 2016 Act provides as follows:

(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...*

12. s.18 of the 2016 Act provides as follows:

(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.*

(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.*

13. s.20 of the 2016 Act provides as follows:

(1) *A person against whom a banning order is made may apply to the First-tier Tribunal for an order under this section revoking or varying the order.*

(2) *If the banning order was made on the basis of one or more convictions all of which are overturned on appeal, the First-tier Tribunal must revoke the banning order...*

The 2018 Regulations

14. In order to find out what a banning order offence is, it is necessary to turn to the 2018 Regulations.

15. r.3 of the 2018 Regulations provides as follows:

The following offences are banning order offences—

(a) *an offence listed in any of items 1 to 5 of the Schedule, **unless the sentence imposed on the person convicted of the offence (“the offender”) is an absolute discharge or a conditional discharge** (our emphasis)...*

16. Item 3 in the Schedule includes offences in relation to the licensing of HMOs under:

(a) ss.72(1) of the 2004 Act.

(b) s.234(3) of the 2004 Act.

The 2004 Act

17. We must therefore turn to these sections in the 2004 Act to see in more detail what those offences are.

18. s.72 of the 2004 Act provides:

(1) A person commits an offence if he is a person having control of or managing an HMO which is required to be licensed under this Part (see section 61(1)) but is not so licensed...

(6) A person who commits an offence under subsection (1) ... is liable on summary conviction to a fine..

19. s.234 of the 2004 Act provides:

(1) The appropriate national authority may by regulations make provision for the purpose of ensuring that, in respect of every house in multiple occupation of a description specified in the regulations—

(a) there are in place satisfactory management arrangements; and

(b) satisfactory standards of management are observed...

(3) A person commits an offence if he fails to comply with a regulation under this section...

(5) A person who commits an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

20. In other words, whilst s.72 of the 2004 Act applies to a failure to obtain an HMO licence where one is required, regulations made pursuant to s.234(1) of the 2004 Act impose duties on those who manage HMOs, whether licensed or not.

The 2006 Regulations

21. The 2006 Regulations are made pursuant to s.234(1) of the 2004 Act. The duties thereby imposed are to:

- (a) take safety measures (r.4);
- (b) maintain water supply and drainage (r.5);
- (c) supply and maintain gas and electricity (r.6);
- (d) maintain common parts, fixtures, fittings and appliances (r.7);
- (e) maintain living accommodation (r.8);and
- (f) provide waste disposal facilities (r.9).

WNC's case in outline

22. WNC's case is that the five respondents were parties to a conspiracy, together with now dissolved companies, to rent houses on the basis of single or one family occupancy from the respective head lessees, and then unlawfully, and without the knowledge of the head lessees or the managing agents, to sublet a number of rooms within the houses either:

- (a) without obtaining an HMO licence (a s.72 of the 2004 Act banning order offence); or
- (b) where was an HMO licence in place, failing to comply with the 2006 regulations (a s.234 of the 2004 Act banning order offence).

23. There were no less than 14 separate houses rented by the respondents as part of this conspiracy, in each of which numerous offences were committed.

The houses and the offences

24. Appendix A is a pdf showing each of the 14 houses and the banning order offences committed in respect of each (the regulations are those contained in the 2006 Regulations), and further details of each offence:

- (a) 53 Brook Street

- (1) 12 breaches of r.4 (means of escape from fire); and
 - (2) 3 breaches of r.7 (failure to maintain common parts).
- (b) 79 Essex Street
 - (1) 19 breaches of r.4 (means of escape from fire); and
 - (2) 13 breaches of r.7 (failure to maintain common parts).
- (c) 152 Adnitt Road
 - (1) 1 breach of r.3 (failure to provide information);
 - (2) 21 breaches of r.4 (means of escape from fire); and
 - (3) 2 breaches of r.7 (failure to maintain common parts).
- (d) 39 Ivy Road
 - (1) 1 breach of r.3 (failure to provide information); and
 - (2) 14 breaches of r.4 (means of escape from fire).
- (e) 31 Ivy Road
 - (1) 1 breach of r.3 (failure to provide information);
 - (2) 18 breaches of r.4 (means of escape from fire);
 - (3) 3 breaches of r.7 (failure to maintain common parts); and
 - (4) 1 breach of r.9 (failure to provide waste disposal facilities).
- (f) 30 Derby Road
 - (1) 1 breach of r.3 (failure to provide information); and
 - (2) 22 breaches of r.4 (means of escape from fire);
- (g) 13 Perry Street
 - (1) 10 breaches of r.4 (means of escape from fire); and
 - (2) 1 breach of r.7 (failure to maintain common parts).

(h) 91 Artizan Street

- (1) 22 breaches of r.4 (means of escape from fire);
- (2) 1 breach of r.5 (maintain water supply and drainage);
- (3) 5 breaches of r.7 (failure to maintain common parts);
- (4) 1 breach of r.9 (failure to provide waste disposal facilities); and
- (5) 1 breach of r.8 (failure to maintain living accommodation).

(i) 103 Whitworth Road

- (1) 1 breach of r.3 (failure to provide information); and
- (2) 20 breaches of r.4 (means of escape from fire).

(j) 52 Gray Street

- (1) 5 breaches of r.4 (means of escape from fire); and
- (2) 2 breaches of r.7 (failure to maintain common parts).

(k) 25 Oliver Street

- (1) 1 breach of r.3 (failure to provide information);
- (2) 28 breaches of r.4 (means of escape from fire);
- (3) 3 breaches of r.7 (failure to maintain common parts); and
- (4) 1 breach of r.8 (maintain living accommodation).

(l) 14 Becketts View

- (1) 7 breaches of r.4 (means of escape from fire).

(m) 84 Salisbury Street

- (1) 11 breaches of r.4 (means of escape from fire); and
- (2) 1 breach of r.7 (failure to maintain common parts).

(n) 10 Allen Road

- (1) 1 breach of r.3 (failure to provide information); and
- (2) 11 breaches of r.4 (means of escape from fire)

No respondent committed offences in every house.

25. We were provided with photographs taken of the inside of these 14 houses. They showed starkly the poor condition of each house and, in particular, the lack of fire safety measures. We are entirely satisfied that there was real risk of loss of life from fire in each of the houses.

Notice of intended proceedings

26. On 02 May 2023, Mr Christopher Stopford, Head of Private Housing at WNC, served notice of intended proceedings on each of the respondents.

27. In each case the notice indicated an intention to apply for a banning order which would last for five years, and inviting written representations before the 09 June 2023. In all cases no representations were received.

The offences and convictions

28. Following service of notices of intended proceedings, proceedings were brought against each of the five respondents.

29. The following table shows in respect of each respondent: (1) the offences committed against 72(1) and s.243(3) of the 2004 Act, (2) the dates over which the offences were committed; (3) the number of houses each respondent was concerned with; (4) the conviction in the Magistrates' Court (including the date of the conviction, the plea and whether the conviction is now spent); (5) the date of sentence in the Magistrates' Court and the amount of fine; (6) the date of sentence in the Crown Court, where appealed, and the amount of fine; (7) the date of the notice of intended proceedings; (8) the date the convictions became spent, and (9) the date of the application to the Tribunal.

	<u>VICONSHCI</u>	<u>CERNIHS</u>	<u>OBLIKOVS</u>	<u>CUGUROVS</u>	<u>BOROZDINS</u>
(1) Offences.	8 contrary to s.72(1) and (6) HA 2004.	2 contrary to s.72(1) and (6) HA 2004.	4 contrary to s.72(1) and (6) HA 2004.	9 contrary to s.72(1) and (6) HA 2004.	3 contrary to s.72(1) and (6) HA 2004.

	60 contrary to s.243(3) and (5) HA 2004.	14 contrary to s.243(3) and (5) HA 2004.	21 contrary to s.243(3) and (5) HA 2004.	19 contrary to s.243(3) and (5) HA 2004.	10 contrary to s.243(3) and (5) HA 2004.
(2) Dates of offences.	07/09/20 – 09/03/21.	07/09/20 – 09/03/21.	07/09/20 – 09/03/21.	07/09/20 – 09/03/21.	07/09/20 – 09/03/21.
(3) Number of properties.	8.	2.	4.	9.	3.
(4) MC verdict.	20/12/22. Guilty in absence. Spent.	20/12/22. Guilty in absence. Spent.	20/12/22. Found Guilty. Spent.	19/12/22. Pleaded Guilty. Spent.	27/09/22. Pleaded Guilty. Spent.
(5) MC fine.	23/03/23. £40,000.	23/03/23. £60,000.	23/03/23. £2,000.	23/03/23. £270,000.	23/03/23. £30,000.
(6) Cr Ct fine.				20/09/24. £324,000.	20/09/24. £68,000.
(7) Notice of intention to apply for banning order.	02/05/23. (4 months).	02/05/23. (4 months).	02/05/23. (4 months).	02/05/23. (4 months).	02/05/23. (4 months).
(8) Conviction becomes spent.	20/12/23.	20/12/23.	20/12/23.	19/12/23.	27/09/23.
(9) Applied to Tribunal.	04/11/24.	04/11/24.	04/11/24.	04/11/24.	04/11/24.

30. The fines reflect the gravity of the offences committed by each respondent. We do not propose to go behind these assessments made by the criminal courts. In any event, having taken into account all the written evidence and the oral evidence of Mr Stopford, we consider that Mr Cugurovs was undoubtedly the ring leader, and that the others more or less broadly had the same lower level of involvement.

31. We were told that Mr Oblikovs' fine was so low, not because of his level of involvement and culpability, but because of his meagre financial resources.

Mr M Borozdins

32. In the case of Mr Borozdins, he pleaded guilty to 13 offences on 27 September 2022, almost three months before the others. Notice of intention to apply for a banning order was given on 02 May 2023. As we have seen in paragraph 9 above, by s.15(6) of

the 2016 Act a notice of intended proceedings must 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. In this case, the notice was given a few weeks after the expiry of the period of six months.

33. Very fairly, Ms S Desfontaines (representing WNC) drew our attention to this delay. However, she argued that the critical date in this case was not the date of the guilty plea, but the date of sentence, which was 23 March 2023. This was within the period of six months, and therefore satisfied s.15(6).

34. Her argument was as follows. By s.14(3) of the 2016 Act a banning order offence means an offence of a description specified in the 2018 Regulations.

35. As we saw in paragraph 15 above, r.3 of the 2018 Regulations, where relevant, is as follows:

The following offences, amongst others, are banning order offences -

(a) an offence listed in any of items 1 to 5 of the Schedule, unless the sentence imposed on the person convicted of the offence (“the offender”) is an absolute discharge or a conditional discharge (our emphasis); ...

36. As we have also seen, offences against s.72 and 234 of the 2004 Act are within the Schedule.

37. Ms S Desfontaines says that one cannot tell whether an offence is a banning order offence until it is known whether the sentence is an absolute or conditional discharge or not. Therefore, the only sensible interpretation is that the phrase “on the day on which the person was convicted” in s.15(6) of the 2016 Act must mean in a case such as this “on the day on which the person was sentenced”.

38. This was a credible argument. We were told that there was no authority one way or the other on this.

39. The obvious starting point, however, is that a conviction and a sentence are different and separate matters.

40. Indeed, there are instances where the Court trying a case and the Court passing

sentence are not one and the same. For example, the power of Magistrates in certain circumstances to commit a defendant to the Crown Court for sentence: see Chapter 2 Sentencing Act 2002.

41. There is no reason why a notice of intended proceedings cannot be given within six months of the conviction, and then revoked under s.20(1) of the 2016 Act (see paragraph 13 above) if it turns out that the sentence is one of an absolute discharge or conditional.

42. Indeed, s.20(2) of the 2016 Act provides:

If the banning order was made on the basis of one or more convictions all of which are overturned on appeal, the First-tier Tribunal must revoke the banning order.

43. In other words, a banning order can be made despite an appeal pending against the relevant conviction or convictions. There is no need to wait the outcome of the appeal, because if the appeal is successful then the banning order has to be revoked.

44. In the same way, it seems to us, in the case of banning orders there is no need to wait until it is known what the sentence will be.

45. It is also instructive to contrast the different approach in the Sexual Offences Act 2003 (“the 2003 Act”) to notification requirements. The relevant provisions are set out in ss.80-83 and schedule 3. It works as follows.

46. One example is a familial child sex offender who has been convicted and sentenced to imprisonment for a term of at least 12 months.

47. Such an offender has to notify to the police certain information within the period of 3 days beginning with the relevant date.

48. The relevant date is defined as the date of conviction. See s.82(6) of the 2003 Act.

49. But at the date of conviction it will not be known whether the offender falls under the obligation to notify the police, because the requirement is only engaged in this case if he has been sentenced to imprisonment for a term of at least 12 months.

50. It may well be the case that pre-sentencing reports are required before sentencing. So the offender does not know whether or not he is subject to the notification requirements until sentencing takes place, which will be more than 3 days after conviction.

51. In order to avoid this absurdity, s.132 of the 2003 Act provides that, in such a situation, a person is to be regarded as being convicted at the time when he is sentenced.

52. Our attention was not drawn to any comparable provision in the legislation relating to banning orders. Had Parliament wished to extend the time for giving a notice of intended proceedings to the date of sentencing it could easily have said so. It has not.

53. Accordingly, we conclude that the notice of intention was given more than six months after conviction, and therefore the application for a banning order against Mr Borozdins must be dismissed.

The spent convictions

54. We have set out above the considerable number of serious convictions drawn to our attention for us to use as a basis for making banning orders. But are we entitled to rely upon spent convictions?

55. By s.5(2) Rehabilitation of Offenders Act 1974, a fine becomes a spent conviction after one year. So all the convictions to which we have been referred are spent.

56. However, s.7(3) provides:

If at any stage in any proceedings before a judicial authority in England and Wales ... the authority is satisfied, in the light of any considerations which appear to it to be relevant (including any evidence which has been or may thereafter be put before it), that justice cannot be done in the case except by admitting or requiring evidence relating to a person's spent convictions or to circumstances ancillary thereto, that authority may admit ... and may determine any issue to which the evidence relates in disregard, so far as necessary, of those provisions.

57. In Hussain v Newham LBC [2023] UKUT 287 (LC) the respondent was found guilty of seven offences, one for an unlicensed HMO, and six under the 2006 Regulations due to the poor condition of the property including fire hazards. He was fined £10k.

58. In March 2022 the local authority served the relevant notice of intention under s.15 of the 2016 Act to apply for a banning order, and subsequently applied for this in May 2022 once the 28 day period for making representations had expired. The Tribunal heard the case in November 2022 and issued its decision in February 2023.

59. It was common ground between the parties and the FTT that the Government's "Banning Order Offences under the Housing and Planning Act: Guidance for Local Housing Authorities" issued in 2018 was non-statutory. This says at paragraph 3.4:

A spent conviction should not be taken into account when determining whether to apply for and/or make a banning order.

60. The Tribunal made a banning order for a period of three years. It stated that such non-statutory guidance was not a tool for the interpretation of the 2016 Act. It concluded that the procedure local authorities had to follow before applying, and the delays in hearing such applications, meant that they had to be able to consider the relevant convictions even if they were spent by the time of the hearing.

61. The landlord appealed this decision on the proper construction of ss.15 and 16 of the 2016 Act, and that the Tribunal had been irrational in considering the justice could only be done by taking the spent convictions into account.

62. The Upper Tribunal dismissed the appeal. It was satisfied that banning orders could be based on convictions that became spent after a local authority had applied following the laid down procedure. It agreed with the Tribunal that s.20 of the 2016 Act was a separate matter. Neither s.15 nor s.16 placed any restriction on the use of spent convictions, provided the Tribunal is persuaded that justice could only be done with their admittance as evidence.

63. In our judgment this a case in which justice can only be done by admitting the convictions which show both the scale of the conspiracy and the seriousness of the fire safety offences.

Discussion

64. We now draw the strands together.

65. The overarching modus operandi of the respondents was a joint enterprise whereby they would approach managing agents operating in the Northampton area, would obtain tenancies, usually assured shorthold tenancies in a single family name, for single or family occupancy of the respective houses.

66. The respondents would then convert by way of sub-letting the houses into HMOs, without the knowledge or consent of the owners or managing agents:

- (a) without appropriate licensing of these HMOs under s.72 of the 2004 Act; and

- (b) then committing numerous breaches of the conditions required of an HMO under the 2006 Regulations.

67. Most worryingly, most of those breaches related to serious failures regarding fire safety.

68. Rents were collected by the respondents, or companies they controlled (now dissolved), and then channelled through both personal and company bank accounts for the purposes of financial gain. The sub-letting income being greatly inflated from the single family tenancy agreements meant that the managing agents continued to be paid, increasing the level of deception in the joint enterprise and leaving the managing agents with limited reason for concern.

69. No sub-tenants of the respondents are still residing in any of the relevant houses, so no consequential orders need to be made.

Should we make a banning order?

70. The banning order offences were committed at a time when each respondent was a residential landlord of the relevant house.

71. We repeat for convenience s.16(4) of the 2016 Act, set out above at paragraph 10:

(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.*

72. From what has been set out above, we form the view that the offences are of the most serious nature.

73. We take into account (a) the number of participants in the conspiracy, (b) the wide scope of the conspiracy, (c) the number of houses involved, (d) the duping of the managing agents, (e) the amount of money secretly obtained in excess of the proper rent payable to the head lessees, and (f) perhaps most importantly, over 200 breaches of fire safety regulations which put human life at risk

74. There are no previous convictions for banning order offences. No respondent has at any time been included in the database of rogue landlords and property agents.

75. The likely effect of the banning of order is that the respondents will no longer be able to hold HMOs.

76. Taking all these factors into account, we find without hesitation that banning orders should be made against each respondent.

Length of the banning order

77. WNC asked for a 5 year banning order in respect of each of the respondents. We are not bound by that figure.

78. We have come to the clear conclusion that, in the light of what has been set out

above, each of the respondents (save for Mr Borozdins) should be subject to a banning order for life.

79. For the reasons given, the application against Mr Borozdins is dismissed.

Simon Brilliant

07 May 2025