FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00BJ/HBA/2020/0008 V:CVP**
Applicant	**:**	**Wandsworth Council**
Representative	**:**	**Ms Michelle Marsden, Private Housing Enforcement Officer**
Respondent	**:**	**Mr Balazs Stalter**
Type of application	**:**	**Application for a banning order – section 15(1) of the Housing and Planning Act 2016**
Tribunal Member	**:**	**Judge N Carr** **Mrs H Bowers (Regional Surveyor)**
Date of Decision	**:**	**15 April 2021**

DECISION AND REASONS

DECISION

The Tribunal declines to make a banning order.

REASONS

BACKGROUND

1. The Applicant local housing authority ("LHA") applies, under section 15(1) of the Housing and Planning Act 2016 ('the Act'), for a banning order against Mr Balazs Stalter ('the Respondent'), who has been convicted of a banning order offence prescribed by the Act. By that Application, the LHA seeks a lifetime ban.

2. The LHA has provided a 29-page bundle of documents. Numbers in bold and in square brackets below refer to pages in the hearing bundle prepared by the LHA. The Respondent has neither responded to or participated in these proceedings.

3. This case has been conducted by remote video (CVP) hearing. A face-to-face hearing was not held. It was not practicable during the currency of the pandemic. No party requested a face-to-face hearing, and all issues could be determined in a remote hearing. Unfortunately, due to technical issues, the Applicant's representative was only able to join the hearing by telephone. However, we are content that did not detract from the ability to proceed, and the Applicant's representative consented to the hearing carrying on in that format rather than having to find another fixture.

4. On 21 November 2019, at Lavender Hill Magistrates' Court, the Respondent was convicted of a prescribed offence under the Act, namely: on 26 February 2019, being in control or management of a house in multiple occupation, namely 37 Longmead Road, Tooting, London SW17 8PN ('the Property'), requiring a licence but that was not so licensed, contrary to section 72 Housing Act 2004. The Respondent was convicted after trial (after entering a 'not guilty' plea), and fined £1,858.00 (as well as ordered to pay a victim surcharge and costs) **[11]**.

5. The Respondent unsuccessfully appealed his conviction to the Crown Court at Kingston. Further costs were added to those already ordered **[11]**.

6. On 28 November 2019, the LHA sent to the Respondent a Notice of Intention to seek a Banning Order pursuant to section 16 of the Act. The reason for seeking the order given was the conviction on 21 November 2019, and the notice of banning period sought was 24 months **[9]**.

7. The Respondent was given until 7 January 2020 to make representations. No representations were made.

8. This Application was made to the Tribunal on 1 October 2020, and seeks a lifetime banning order against the Respondent **[2-6]** and **[12-13]**. Directions were made by the Tribunal and Amended on 22 January 2021. No copy appears in the Bundle.

9. The Respondent has not responded, and on 24 March 2021 the Tribunal notified him that if he did not comply with the Directions by 1 April 2021, the Tribunal might refuse to allow him to admit any documents or make any submissions pursuant to rule 9 of the Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013 (' the Rules'). No response was received, and the Respondent has not attended the hearing today. Ms Michelle Marsden appeared on behalf of the Applicant.

10. As a preliminary matter, the name of the Applicant identified in the Application Form was substituted as 'Wandsworth Council', for whom Ms Marsden is the Private Housing Enforcement Officer and representative in the tri-borough regulatory services arrangements between Kingston-upon-Thames,

Wandsworth and Merton ('the tri-borough'), and in which Council area the offence relied on was committed.

11. The Property is owned by a Freeholder Mr Sanjay Aggerwal. It is said that the Respondent had entered into an Assured Shorthold Tenancy Agreement with the Freeholder's Agent, Streets Estates Limited, on 5 October 2017. It is said that the Respondent sub-let the property on an HMO basis without the Landlord or his Agent's knowledge or consent.

12. A variety of allegations are made in the Application regarding the Respondent's conduct in the criminal proceedings. Allegations are further made regarding the Respondent's wider conduct, namely that "*the respondent is an active landlord of multiple properties and is currently operating numerous houses in multiple occupation where there are fire hazards and poor standards putting tenants at risk*". In the document described as 'Description of the Offence **[12]**, the following is asserted: *"Mr Balazs Stalter is still believed to be residing in London and operating and managing a number of unlicensed HMOs for which he is obtaining rent from the tenants occupying the houses. These houses are believed not to be in compliance with the minimum standards for such an occupied shared house and as such is required to be banned from this potentially dangerous activity as a means of generating his income*".

13. In it's 'Draft Proposed Banning Order' **[14],** the LHA states "*It is known that the respondent has his own accommodation that he has failed to disclose to the local authority and to the courts. All properties where the respondent enters into an Assured Shorthold Tenancy Agreement with the landlord, posing as the tenant to reside at the property as a single family dwelling he subsequently advertises for rent and rents out to multiple individuals occupying the premises as a HMO. The respondent severely overcrowds the property for his own financial income gain and has no regard for the health and safety and wellbeing of any of the tenants residing in the overcrowded, hazardous premises he created."*

14. The documents provided do not evidence any of those allegations. Ms Marsden conceded in evidence that she cannot provide any, though she states there are well-founded suspicions that at the time of the conviction, the Respondent was managing between 10 – 20 other properties across the London area, and the belief was that these were operating as unlicensed HMOs with no regard to safety.

15. There are no other offences that are relied on in the Application, and Ms Marsden confirmed that a search against the Respondent's name came up with a negative result.

16. The Applicant asserts in its evidence that there is no Guidance, or any Policy in the tri-borough, to be taken into account in deciding whether to seek a banning order against a person or company guilty of a banning order offence. On 12 April 2021 the Tribunal caused to be sent to the parties the Ministry of Housing, Communities and Local Government "Banning Order Offences Under the

Housing and Planning Act 2016: Guidance for Local Housing Authorities" from April 2018 ('the MHCLG Guidance').

LAW AND GUIDANCE

17. The statutory provisions relating to banning orders are contained within Chapter 2 of Part 2 of the Act.

18. In summary, an 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 a 'property agent' at the time the offence was committed. These expressions are defined in sections 54, 55 and 56 of the 2016 Act.

19. Section 14 of the Act provides that if a banning order is made by the Tribunal, the person is banned 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.

20. Section 15 requires the authority to give the person a notice of intended proceedings 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, and must:

(a) inform the person that the authority is proposing to apply for a banning order and explain why;

(b) state the length of each proposed ban; and

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

21. Section 16(4) provides that in deciding whether to make a banning order against a person, and in deciding what order to make, the Tribunal must consider:

(a) the seriousness of the offence of which the person has been convicted;

(b) any previous convictions that the person has for a banning order offence;

(c) whether the person is or has at any time been included in the database of rogue landlords and property agents; and

(d) the likely effect of the banning order on the person and anyone else who may be affected by the order.

22. The MHCLG Guidance, published in April 2018, is non-statutory. The stated intention of the Guidance is to help local authorities understand their new powers to ban landlords from renting out properties in the private sector. Its recommendations are not mandatory, but it is good practice for an LHA to follow them, and the Tribunal may take them into account when coming to its own decision.

23. The MHCLG Guidance notes the Government's intention to crack down on a "*small number of rogue or criminal landlords [*who*] knowingly rent out unsafe and substandard accommodation*" and to disrupt their business model.

24. Paragraph 1.7 of the MHCLG 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*".

25. Paragraph 3.1 of the MHCLG Guidance states: "*Local housing authorities are expected to develop and document their own policy on when to pursue a banning order and should decide which option it wishes to pursue on a case-by-case basis in line with that policy. Our expectation is that a local housing authority will pursue a banning order for the most serious offenders.*"

ISSUES

26. The **issues** for the Tribunal to consider include:

(i) Whether the LHA has given the Respondent a Notice of Intended Proceedings in compliance with section 15 of the Act, and whether it has otherwise complied with the procedural requirements of that section.

(ii) Whether the Respondent has been convicted of a banning order offence.

(iii) Whether, at the time the offence was committed, the Respondent was a 'residential landlord' or a 'property agent'.

(iv) Whether to make a banning order (and, if so, what order to make) having regard to the matters set out in section 16(4) and the MHCLG Guidance.

DECISION

27. The Tribunal has been presented with sufficient evidence, as recited above, to find that the answers to issues (ii) and (iii) are 'yes'. The questions that we need to address more substantially are those demarcated (i) - whether the LHA has given the Respondent notice of intended proceedings in compliance with section 15 of the Act – and (iv) – whether a banning order should be made and if so for what duration above. We adopt the same alpha-numerics in the headings below.

(i) Has the LHA given the Respondent a notice of intended proceedings in compliance with section 15 of the Act?

28. The Notice of Intended Proceedings ('the Notice') dated 28 November 2019 **[9]** states (a) the proposed duration of the banning order is 24 months, and (b) the reason it is sought is that the LHA 'believes' the Respondent was convicted of a banning order offence.

(a) Duration of banning order sought

29. It is at least arguable that by bringing the current Application seeking a lifetime ban, the Notice is ineffective as it does not set out the LHA's intentions in accordance with section 15(3)(b) of the Act, or alternatively the Application brought is an abuse of process as it goes considerably further than the Notice given.

30. We asked Ms Marsden whether a new Notice of Intention was given, supporting the seeking of a lifetime ban. In response to this, Ms Marsden concedes that no new Notice was served. She says that the Tribunal should treat the Application as for a period of a *minimum* of 24 months in accordance with the Notice, as the Application Form notifies the Respondent of the intention to seek a longer period.

31. We consider that the Application can only be construed as an application for a banning order arising from the LHA's Notice in compliance with section 15, and therefore must be limited to the contents of that Notice. The *maximum* permissible duration of any order we were to make, then, would be 24 months.

(b) Requirement to give reasons

32. In circumstances in which an application can only *be* brought to the Tribunal for a banning order when an individual has been convicted of a banning order offence, to cite the reason for making the application simply as the existence of the conviction is tautologous. The Notice given by the LHA fails to give any explanation to the Respondent why that conviction justifies seeking a banning order as required by s15(3)(a).

33. The requirement to give reasons is more than merely functional; it goes to a respondent's right to respond in his own defence. If he does not know the LHA's reasoning for why this conviction is so serious as to justify a banning order, or as to justify a particular period, how might he make effective representations?

34. Landlords are convicted of banning order offences frequently, but not every conviction leads to a banning order application. The MHCLG Guidance specifically states that a banning order should be sought in those cases that are sufficiently serious to justify it. Ordinarily the Tribunal would expect to see the explanation for why a banning order is justified in a particular case, given by reference to the LHA's own policy on enforcement and matrices therein. This ensures uniformity of approach applying objective standards, and that the LHA's decision is properly 'challengeable'.

35. However, despite the MHCLG Guidance specifically indicating that LHAs should develop their own policies, it does not appear that the Applicant LHA has one. In fact, it appears that they were not aware of the MHCLG Guidance **[16]**.

36. When these points were put to her, Ms Marsden for the LHA said that this offence was particularly egregious because the Respondent had failed to work with or communicate with her, so that steps could be taken to remedy the failure to licence and the safety implications for residents. She stated that, at the time of the Notice, the LHA had considered the reasons to be sufficient. She accepted, having read the MHCLG Guidance, that the LHA should have explained why the offence for which the Respondent was convicted was considered of sufficient severity to justify the seeking of a banning order, and that mere reference to the fact of conviction was probably insufficient.

37. We find that the giving of reasons is fundamental to the validity of the Notice. The process of explaining why a step such as seeking a banning order is being taken allows proper checks and balances on the LHA's own reasoning and compliance with its policy and the MHCLG Guidance. The explanation should operate as a 'warning shot across the bows' for the Respondent, allowing him to engage with the arguments.

38. In this case, lacking any proper explanation of the reasoning behind intending to pursue a banning order we find that the Notice is deficient, and therefore that these proceedings are invalid. However, we go on to consider whether this case would justify a banning order in any event, below.

(iv) Should a banning order be made, and if so for what duration?

39. The Act sets out what must be taken into account by the Tribunal in considering whether to make a banning order. This is, of course, not a closed list of considerations, but represents what must be taken into account in each case.

40. The offence of failure to licence is no doubt always a serious one, given the reasoning behind requiring Landlords to obtain licenses for HMOs. However, there is a fundamental difference between non-compliance from a position of innocent negligence with no other aggravating features at the bottom end, and deliberate and conscious flouting of the law accompanied by additional evidence of blatant disregard for occupants' health and safety at the other. The MHCLG Guidance makes very clear that banning orders are aimed at the worst offending Landlords, who behave egregiously and rent out unsafe and substandard accommodation.

41. Ms Marsden has set out that the accommodation was substandard in a number of ways: one of the rooms was too small to qualify as occupiable for HMO purposes; there was a lack of minimum 30-minute boarding and other issues relating to fire safety; there is a general assertion that there was no regard to general maintenance. Ms Marsden confirms that no criminal conviction was sought or obtained in respect of the stated safety breaches on which she relies in

these proceedings. The LHA had served what Ms Marsden called a 'preliminary notice' as to improvements considered necessary to be made by the Respondent at the Property, but no formal steps had been taken to follow this up. That 'informal notice' and the basis on which the hazards where identified/calculated forms no part of her evidence before us, and there is no evidential basis on which this Tribunal can find that the Property was unsafe or substandard.

42. Ms Marsden further relies on the details of the way in which the Respondent conducted himself in relation to the criminal proceedings in obtaining this conviction, in particular that in April 2019 he was given a harassment warning by police in due to what is said to be his behaviour towards the tenants assisting the LHA in the criminal proceedings. The LHA had become embroiled in harassment proceedings in the currency of the criminal proceedings, which they had later dropped on advice as to the likelihood of securing the conviction.

43. Ms Marsden also relied on the fact that the Respondent was found by the Magistrates Court to have faked evidence of a tenancy agreement in support of his Defence.

44. We have no doubt that the Respondent's conduct in those proceedings was to be heavily criticised (and believe Ms Marsden when she says it was, by the Judges involved), but we must be mindful that Ms Marsden's own evidence was that there was insufficient evidence to continue a prosecution for harassment, and that the Judges (in both the Magistrates' and Crown Court) no doubt took account of the matter of 'faked' evidence as an aggravating feature when fixing the level of penalty they sentenced the Respondent to.

45. Ms Marsden confirmed that the LHA has obtained no additional convictions nor brought further prosecutions in respect of the unidentified other properties within the Wandsworth area of which the Respondent is said to have been the Landlord, and for which she is aware that tenants have made rent repayment order applications founded on alleged criminal breaches. Her evidence is that at the date of the criminal conviction, the Respondent was suspected of being involved in between 10 – 20 of these 'rent to rent' type arrangements across London, but no evidence of that has been provided, and when asked what the current number is, Ms Marsden confirmed she was unable to find <u>any</u> (her explanation being that she suspects the Respondent is now going by an alias).

46. Her searches have failed to turn up any additional convictions in LHA areas elsewhere at all, whether in respect of failure to licence, failure to comply with Improvement Notices, or what is said to be the 'dangerous conditions' at 'other properties'. Ms Marsden's evidence in that regard is based on supposition, on the basis of what she says, but cannot demonstrate, is the Respondent's overarching behaviour.

47. At **[14]** the LHA states that the Respondent was included in the database of rogue landlords for a year after the index conviction. It is said that has now lapsed, it having been included on the database for the period of 12 months under the LHA's powers in section 30(1) of the Act. The Notice in respect of that inclusion has not been included amongst the LHA's papers, nor the reasoning behind the

12 months expiry. No evidence is provided that the LHA has issued financial penalties that might have otherwise engaged its powers under section 30(2) of the Act. There is no evidence that any other LHA has included the Respondent on the database.

48. In terms of the effect of any order on the Respondent or anyone else, we have no evidence as to the Respondent's current activities, only that at the date of the conviction in November 2019 these rent-to-rent arrangements were thought to be the Respondent's only income. As regards the protections said to be afforded by a banning order to tenants, they speak for themselves in an appropriate case. Lacking any evidence of the Respondent's current activities, however, and in light of the foregoing, this is not such a case.

49. While Ms Marsden relies heavily on the Respondent's failure to engage with the LHA, such that it cannot ensure appropriate housing standards are being met, and while the Tribunal understands Ms Marsden's frustration in that regard, a failure to communicate with her is not, in itself, enough. We must look at the underlying seriousness of the offence. The offence for which the Respondent was prosecuted, and of which he was convicted, was a single failure to license. If a Landlord fails to engage with the LHA, in circumstances as said to be prevailing by Ms Marsden, the Tribunal would expect other formal steps to be taken to secure convictions in appropriate cases. The more enforcement needed, the more relevant a failure by the Landlord to cooperate with the LHA might be.

50. In view of that analysis, applying the considerations set out in section 16(4) of the Act and the MHCLG Guidance, our view is that this case does not meet the threshold for a banning order.

Conclusion

51. We have found that the Notice was deficient, for its failure to comply with section 15(1)(a) of the Act. Even had we not so found, we would have declined to make a banning order as the application of the considerations in section 16(4) of the Act and the MHCLG Guidance led us to the conclusion that this was an insufficiently serious case for a banning order.

52. Respectfully, the LHA might have been substantially assisted in this case by a policy as envisaged by the MHCLG Guidance. A policy framework is not only a public facing document to reassure constituents of the even application of measures to be taken by an LHA, but is also a check and balance on the exercise of a discretion that, if deployed properly, will protect the LHA's duly authorised officers from undue criticism in making what are (without question) difficult decisions.

53. While there may be cases in which a single conviction for a banning order offence will be of sufficient gravity to justify a banning order, we consider that is likely to be rare indeed when the index offence is a single failure to licence. The Tribunal is further unlikely to be persuaded to make such an order on the basis of mere suspicions and vague assertions as to a Landlord's wider conduct. Banning orders are a draconian step, and must be based on clear evidence. That

position is echoed by the MHCLG Guidance, which suggests that banning orders are for the most serious offenders. The importance of a policy reflecting those considerations cannot be overemphasised.

Judge N Carr
15 April 2021

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).