



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

Case reference : **BIR/00GF/HBA/2020/0001**

Applicant : **Telford and Wrekin Council**

Respondent : **Kalim Ahmed Hussain**

Type of application : **Application for a Banning Order –
Section 15(1) of the Housing and
Planning Act 2016**

Tribunal member(s) : **Judge D Jackson
Mr R Chumley-Roberts MCIEH JP**

Date of decision : **4 May 2020**

DECISION

DECISION

The Tribunal has not exercised its discretion to make a banning order.

REASONS

Background

1. This is an application, brought by Telford and Wrekin Council (“the Local Authority”), seeking an order under s.16 Housing and Planning Act 2016 (“the 2016 Act”), against Mr Kalim Ahmed Hussain.
2. Numbers in bold and in square brackets below refer to pages in the hearing bundle prepared by the Local Authority.
3. On 22 July 2019, at Telford Magistrates’ Court, Mr Hussain was convicted of six offences relating to 25 Bank Road, Wellington, Telford (“the Property”). The convictions include four offences under s.234 of the Housing Act 2004 (“the 2004 Act”), concerning breaches of the Management of Houses in Multiple Occupation (England) Regulations 2006 (“the 2006 Regulations”). The four offences are:
 - (i) Between 19 November and 27 November 2018 failing to ensure that all means of escape from fire were kept free from obstruction and maintained in good order. Breach of Regulation 4(1)(a) and (b); (s234(3) of the 2004 Act)
 - (ii) Between 19 November and 27 November 2018 failing to ensure that fire-fighting equipment and fire alarms were maintained in good order. Breach of Regulation 4(2); (s234(3) of the 2004 Act)
 - (iii) Between 19 November and 5 February 2019 failing to ensure that management contact details were prominently displayed within the property. Breach of Regulation 3 (a) and (b); (s234(3) of the 2004 Act)
 - (iv) On 5 January 2019 failed to provide the electrical safety certificate for the property within 7 days of written request. Breach of Regulation 6(3)(c); (s234(3) of the 2004 Act)

Mr Hussain was fined £180 for each offence [**E4**].

4. The Property is owned by Munir Hussain and Nadim Hussain, who are respectively, Mr Hussain’s father and brother, but appears to have been managed by Mr Hussain since 2015.
5. On 6 August 2019, the Local Authority sent Mr Hussain written notice that it intended to apply to this tribunal for a Banning Order for a period of 2 years [**F1**]. The notice invited him to make representations by 4pm on 9 September 2019.

6. Mr Hussain did not make any representations to the Local Authority.
7. This application was issued on 3 January 2020. Directions were given by the Tribunal on 6 January 2020 [D1-17] setting out the steps the parties were required to take in preparation for the application to be heard. The Local Authority complied with these directions, Mr Hussain did not. He failed to provide a statement of case in response to the application and the Tribunal has not received any communication from him of any kind. On the 12 March 2020 Mr Hussain was barred from taking further part in these proceedings.
8. On 19 March 2020, the Tribunal determined that the application was suitable for paper determination, as requested by the Local Authority in its application, but in the light of government advice concerning the Covid-19 pandemic, the proposed inspection of the Property would be cancelled.

Statutory Provisions and Guidance

9. The statutory provisions relating to Banning Orders are contained within Chapter 2 of Part 2 of the 2016 Act.
10. In summary, a local housing authority 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. These expressions are defined in sections 54, 55 and 56 of the 2016 Act. Broadly speaking, however, they cover property management activities carried out by a person on behalf of a third party, in the course of a business.
11. Section 14 of the 2016 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.
12. Section 15 requires the authority 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.
13. The authority 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.

14. 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.

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 Schedule”). The 2018 Regulations only apply to offences committed after the coming into force of the regulations, on 6th April 2018.

16. The full list was annexed to the directions issued to the parties on 6 January 2020, but for the purposes of this application, the following offences identified in the Schedule to the Regulations, constitute Banning Order offences, unless the sentence imposed on the person convicted of the offence is an absolute discharge or a conditional discharge:

Offences in relation to failure to comply with management regulations in respect of Houses in Multiple Occupation under s.234(3) Housing Act 2004.

Guidance

17. The Ministry of Housing, Communities and Local Government published non-statutory guidance in April 2018: *Banning Order offences under the 2016 Act - Guidance to Local Authorities*, (“the Guidance”) [B1-25]. 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 a local housing authority to follow them.

18. The Guidance notes the Government’s intention to crack down on a “small number of rogue or criminal landlord’s [who] knowingly rent out unsafe and substandard accommodation” and to disrupt their business model.

19. 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”

20. Paragraph 3.1 states that:

“Our expectation is that a local housing authority will pursue a Banning Order for the most serious offenders”.

21. Paragraph 3.3 addresses the factors that a local housing authority should consider when deciding whether to apply for a Banning Order, and when deciding on the proposed duration of any order. It lists the statutory requirements in s.16(4), and suggests that regard should also 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.

22. The Guidance also states that local housing authorities are expected to develop and document their own policy on when to pursue a banning order and should decide which option to pursue on a case by case basis, in line with that policy. It repeats the expectation that a local housing authority will pursue a banning order for the most serious offenders.

23. The Local Authority relies on its own policy published in November 2018 “Telford and Wrekin Council – The Housing and Planning Act 2016 – Banning Orders and Rogue Landlord Database – Determination of making an entry/application and associated timescales”. The policy adopts a matrix for determining the matters it should have regard to when making a banning order application and the minimum term to be imposed [**F5 and F6**].

The Local Authorities Case

24. The Local Authorities decision to seek a Banning Order for a period of 2 years “as per matrix” was made following discussions between the case officer, Michelle Hughes and her managers Timothy Bage and Lesley William, on various dates. The reasons for the decision are set out in the case officer’s Statement of Reasons Appendix B [**F7-8**]. The case officer’s Statement confirms that:

- (i) In addition to the 4 management regulation offences the manager was also convicted of failing to comply with a request for copies of tenancy agreements under S236 Housing Act 2004 and failing to respond to an information notice served under section 16 of the Local Government (Miscellaneous Provisions) Act 1976, further demonstrating his inability to comply with formalities.
- (ii) Previous interventions had taken place at the Property including service of improvement notices in 2015, on the owners, relating to the condition of fire doors and operation of smoke detection equipment on the first floor.
- (iii) The case officer suspected she was deliberately obstructed when trying to undertake visits and misled regarding the condition of the Property.

- (iv) Mr Hussain tried to mislead the magistrates about the severity of the issues and claimed not to be managing the property, just assisting his father in running the rental side while he was unwell. However, Michelle Hughes confirms that Mr Hussain has been a constant figure at the premises since her first involvement in 2015.
- (v) The risk of harm arising from the defective fire doors and defective alarm system was significant and had been raised with Mr Hussain on previous occasions. Previous interventions had not resulted in more proactive management by the owner.
- (vi) Substantial building works were being undertaken to the ground floor without correct planning and building regulations permissions, demonstrating a lack of regard to regulation and the need for Mr Hussain to face the consequences of his actions.

25. The Matrix sets out a list of 7 Factors the Local Authority will take into account when assessing the likelihood that a Banning Order application **will not** be made. [F5].

26. The Local Authorities starting point is that all banning order offences are serious and save in exceptional circumstances, will result in an application being made. To determine if such circumstances apply, each Factor is assessed against stated criteria. The criteria are ranked in ascending order of severity along a scale of likelihood running from Almost Certain [i.e. likelihood a banning order will **not** be sought] to Absolute Uncertainty [i.e. no likelihood of **not** seeking a banning order]. Having applied the matrix, the Local Authority assess whether exceptional circumstances indicate it should not apply [F5].

27. A similar matrix is used to calculate the recommended period for a banning order [F6]

28. The case officer highlighted the relevant criteria to be applied in this case against each factor as follows:

<u>Factor/ criteria</u>	<u>Likelihood an application will not be made</u>	<u>Period of Order</u>
Severity of offence: <i>All offences considered serious, default is that an application will be made</i>	Absolute Uncertainty	2-4 years (2-5 offences)
Court Sanction: <i>Fine £1001 to £2,500.</i>	Very High	1-2 years
No of Offences: <i>Multiple offences</i>	Very Unlikely	2-4 years

(i.e. >3)

Culpability: <i>First offence; no history of non-compliance; not on rogue landlord database</i>	Almost Certain	1-2 years
Deter offender: <i>Some confidence sanction will deter landlord and landlord community</i>	Moderate	4-5 years
Harm or Potential Harm: <i>High physical or psychological harm e.g. life-long consequences progressive, permanent or irreversible health effects. High levels of perceived harm/fear by occupiers/local community</i>	Very Unlikely	4-5 years
Punishment of offender: <i>Court sanction insufficient. Financial penalty considered part of business model of landlord</i>	Very Unlikely	4-5 years

29. It is unclear from the Local Authorities statement of case how the conclusions drawn from the matrix were weighted/scored and aggregated to make a final decision on whether to apply for a banning order, the appropriate period of the order, or what would constitute 'exceptional circumstances'. However, having applied its matrix as above; and following discussions between the case officer and her managers, the Local Authority determined that it should make this application.

30. The application summarises the Local Authorities reasons for making the application [A7] under just two of the seven Factors, i.e. the seriousness of the offences; and the likely effect of an order on Mr Hussain and anyone else likely to be affected. These two Factors appear therefore to have been more determinative than the other five Factors in arriving at the decision to apply.

31. The Local Authorities application is supported by:

- a) A Statement of Facts re convictions [E1-2].
- b) Statement of Lesley Williams, Public Protection Manager (private sector housing) dated 24 January 2020 [G1-4]
- c) Statement of Ceri Lewis, Environmental Health Officer, dated 21 May 2019 [H21-22]
- d) Statement of Michelle Hughes, Environmental Health Officer, dated 24 May 2019 [H23-28]

- e) Statement of Paul Fulgoni, Watch Manager – Inspecting Officer, Shropshire Fire Service, dated 28 May 2019 [**H29-32**]

Background facts and evidence

32. The offences relate to 25 Bank Road Wellington Telford, a detached two storey property, which has on the first floor, a 3-bedroom HMO with a communal kitchen/diner and a shared staircase. Mr Hussain appears to have been managing the Property on behalf of his father and brother, the freehold owners, at the time of the offences.
33. The Local Authority statements confirm that a report of overcrowding was reported to the Local Authority in November 2018. This was investigated by Michelle Hughes and Ceri Lewis who inspected the Property on 19 November 2018. Mr Hussain was present. Extensive building works were being carried out to the ground floor. The officers noted that three of the first-floor fire doors and frames were defective, compromising their effectiveness to withstand the effects of fire for 30 minutes (in breach of Regulation 4(1)(b)). Also, that there were missing smoke detector heads in the hallway, the kitchen area and the three bedrooms, in breach of Regulation 4(2). The officers also noted management details were not displayed, in breach of Regulation 3(b) [**H23/24**].
34. A referral was made to Paul Fulgoni, watch manager at Shropshire Fire and Rescue Service who inspected the Property on 20 November 2018. He confirmed that the communal space had a hardwired smoke detection unit linked to other detectors in the Property. If any unit detected smoke it should activate a general warning alarm. However, the removal of the three detector heads in the bedrooms meant that a fire would not be detected and a warning alarm triggered, until the smoke reached the communal space. Mr Hussain was contacted by Michelle Hussain on the 20 November requiring the immediate re-instatement of the smoke detectors in all three bedrooms. He confirmed this would be done that evening [**H29/30**].
35. On 27 November 2018 Michelle Hughes re-inspected the Property. Three fire doors/frames remained non-compliant. Smoke detector heads had been fitted to the hallway, kitchen and all three bedrooms but the rear bedroom smoke detector was hanging down. There was a missing heat detector in the kitchen and the communal fire extinguisher had not been checked since June 2015 – all in breach of Regulation 4(2). Management details were still not displayed [**H25/26**].
36. On 17 December 2018 Michelle Hughes requested the electrical certification for the Property [**H26**].
37. On 19 December 2018 Michelle Hughes served a request for information under section 16 of the 1976 Act on Mr Hussain and on Nadim and Munir Hussain. She also served on all three, a notice under the 2004 Act

requesting copies of the tenancy agreements for the current tenants. The requests remain outstanding which is an offence under s235 of the 2004 Act [**H26/27**].

38. On 5 February Michelle Hughes re-visited the Property with a support officer. Mr Hussain was present. The improvements had been undertaken to the fire doors/frames and all fire detectors were in situ. Mr Hussain was reminded about the need to provide the requested information and EICR certificate [H27].
39. An EICR electrical certificate dated 19 July 2019 was provided to the council on 31 July 2019.
40. On 7 March 2019 Mr Hussain, Munir Hussain and Nadim Hussain were invited to attend an interview under caution on 26 March 2019. They did not respond to the invitation and did not attend. All three were subsequently charged with the same 6 offences.
41. On 22 July 2019 Mr Hussain entered a guilty plea to all 6 offences. Proceedings were withdrawn against Munir and Nadim Hussain following Mr Hussain's admission that he was the manager of the HMO. Mr Hussain was fined £180 for each of the 4 banning order offences and each of the two other offences, totalling £1,080 plus costs.
42. Lesley Williams expands on the Local Authorities reasons for seeking a banning order in her statement. Two of the offences relate to fire safety, there was some evidence that Mr Hussain had personally removed the smoke detector heads in the bedrooms at a time when the works to the ground floor presented an increased risk of fire [**G2**]. The defective fire doors/frames could have led to the fire being more advanced before the alarm was raised and the extinguisher, which had not been checked since 2015, might have been ineffective. Mr Hussain as manager of the Property had put lives at risk and has been placed on the Rogue Landlord Register [**G2/3**].
43. Furthermore, Mr Hussain's failure to provide an electrical safety certificate until ordered to do so by the court, his failure to provide an address and contact number for the tenants and the two non-banning order offences of failing to provide information, demonstrate obstruction and a lack of regard for council enforcement services [**G2/3**].
44. Finally, Lesley Williams contends that Mr Hussain has demonstrated no remorse or acceptance of responsibility. In his unsuccessful appeal against refusal of a taxi licence he denied responsibility for the offences saying that the Property was the responsibility of his father and brother [**G3**]. She also notes that Mr Hussain told the magistrates that his sole income was £40.00 per week from shift work in a restaurant and a ban would not therefore affect his income, but the owners would then need to manage the Property themselves, or employ a competent manager [**G3**].

Discussions and Conclusions

45. Based on the evidence described above we are satisfied that the Local Authority have complied with the procedural requirements in section 15 of the 2004 Act.
46. We are also satisfied that on 22 July 2019 Mr Hussain was convicted of four Banning Order offences; namely the offences numbered (i)-(iv) set out in paragraph 3 above. All the convictions are listed in a memorandum of entries on the register of the Magistrates Court included in the Local Authorities bundle [E2]
47. Furthermore, we are satisfied that Mr Hussain was a 'property agent' at the time he committed each offence. The HMO part of the Property was let to three tenants, two of whom were present when the case officer inspected the property [H23]. Mr Hussain has been a constant figure in the management of the Property on behalf of the owners since Michelle Hughes first involvement in 2015 [F8] and he entered guilty pleas to offences of failing to comply with an HMO manager's duties under the 2006 Regulations.

Exercise of discretion to make a Banning Order

48. Given that the mandatory conditions for making a banning order are satisfied, we must decide whether to exercise the Tribunal's discretion to make such an order. In exercising that discretion, we must have regard to the factors mentioned in s.16(4) of the 2016 Act (see paragraph 14 above). In addition, we consider it appropriate to have regard to the Government's non-statutory Guidance on banning orders (see paragraphs 17-22 above) and to the Local Authorities own enforcement policy and matrix (see paragraphs 23 to 28). Although the Guidance is not binding on the Tribunal, it is central-government guidance, and we attach significant weight to its contents. The Local Authorities enforcement policy and matrix also aids in the exercise of our discretion.
49. Mr Hussain has played no part in the proceedings, he has not provided a statement of case in opposition to the banning order application. Lesley Williams has however provided some information concerning Mr Hussain's representations to the magistrates, which assist in determining the issues that he would have put forward. Which are that he was not responsible for the management of the Property, he was just assisting his father, the legal owner, while he was unwell.
50. The first factor to consider is the seriousness of the relevant offences both individually and when taken together. We do not know what factors the magistrates took account of in determining the comparatively low level of fines (£180 for each offence), but the severity of the sentence is not a determinative factor for the present purposes. It is for the Tribunal to assess the seriousness of the offences, based on the evidence available to it.

51. The two offences relating to fire safety are clearly serious in that they pose a relatively high safety risk. However, the evidence confirms that the Property was fitted with an appropriate fire detection system until the removal of some of the detector heads. Effective fire doors and frames had been fitted but had sustained some damage which may have impacted on their ability to withstand fire for 30 minutes. An appropriate fire extinguisher had been installed but not regularly checked. Although these are potentially serious failings, the facts do not suggest that the Property was generally substandard, or that appropriate fire safety facilities had not been installed, which would indicate a finding of the most serious type of offence. The facts indicate that while adequate fire safety facilities had been installed at the Property (possibly pursuant to the improvement notice served in 2015), some of the facilities had not been adequately maintained and these failings presented an increased safety risk in the event of fire.
52. The offence of failing to provide an electrical certificate within 7 days of the request is a serious failing, but as there is no real allegation and certainly no proof, that the electrical system at the premises was defective/dangerous, not of the highest order of seriousness.
53. The offence of failing to provide management information is indicative of poor management of the Property, but does not relate directly to the provision of unsafe or substandard accommodation.
54. We are not convinced that Mr Hussain's culpability is diminished by his claim not to be managing the Property. There is clear evidence that his presence at the Property has been consistent for several years. He was in attendance during most of the inspections and offered assurances, to both the case officers and the fire officer, that remedial work would be undertaken. Furthermore, he entered guilty pleas to the offences, albeit offering lack of responsibility for management in mitigation, and secured the withdrawal of charges against his father and brother by acknowledging that he was managing the HMO. He was at the Property when the problems were first identified by the Local Authority and had ample opportunity to deal with them.
55. We note that Mr Hussain has no previous convictions for banning order offences, but that he has now been included in the database for rogue landlords (see paragraph 42 above). We recognise however that Mr Hussain's inclusion in the database results from the same convictions which now form the basis of the present application for a banning order. As such, this is not a factor which adds significant weight to the case for granting an order.
56. Turning to the likely effect of a banning order, we recognise that such an order could have an adverse effect on Mr Hussain if he is managing the Property as a business. However, he appears to dispute that he is the manager of the HMO, and there is no evidence that he either lets other housing in England or is otherwise involved in property agency/management. The convictions have resulted in the loss of his taxi

licence, and in those proceedings Mr Hussain represented that his sole income of £40.00 per week was derived from shift work in a restaurant. If true, a banning order will not deprive Mr Hussain of any income and is likely to be of limited effect.

57. There is no evidence that a banning order would have any adverse effect on the tenant's. It does not invalidate their tenancy agreements. The owners would however need to either manage the HMO personally or appoint a competent manager.
58. The Local Authorities enforcement policy relies on the application of its matrix which the Tribunal has found confusing and unwieldy to consider and apply. It doesn't allow for the offences to be assessed individually, despite their differing potential to result in harm to the tenants, and offers no guidance on how the findings should be weighted/aggregated to arrive at a decision not to pursue a banning order. Moreover, the Government's Guidance recommends at paragraphs 1.7 and 3.1 that banning orders should only be used for the most serious offenders (see paragraphs 19 and 20 above).
59. The Local Authorities reasons for making the application are set out more clearly on application [A7] and in the Statement of reasons [F7/8] than can be deduced from any consideration of their matrix. They refer to significant risk from fire during the period of the offences. Mr Hussain's failure to deal with the problems promptly, his lack of regard for the Regulations generally and his failure to learn from previous involvement with the Local Authority. Unfortunately, the Local Authority have not provided sufficient evidence of Mr Hussain's involvement with the improvement notices served on the owners in 2015, for the Tribunal to give any weight to the suggestion there might be a relevant prior offence. Mr Hussain's failure to comply with the requests for information demonstrate a lack of regard for regulation generally, but do not add significant weight to the case for granting an order.
60. Taking all the factors into consideration and recognising that banning orders should only be used for the most serious offenders we are not satisfied that the Tribunal should exercise its discretion to make a banning order in this case.

D Jackson
Judge of the First-tier Tribunal

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).