FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**CAM/12UB/HBA/2021/0001 (F2F)**
Applicant	**:**	**Cambridge City Council**
Representative	**:**	**Paul Weller**
Respondent	**:**	**Mr Santiago Jose Hidalgo Ferrin**
Type of application	**:**	**Application for a Banning Order – section 15 of the Housing and Planning Act 2016**
Tribunal member(s)	**:**	**Judge Wayte** **Regional Surveyor Hardman**
Date of decision	**:**	**29 October 2021**

DECISION

Decision of the tribunal

The tribunal does not make a Banning Order.

The application

1. The applicant seeks a banning order under section 15 of the Housing and Planning Act 2016 ("the 2016 Act"). They rely on the respondent having been convicted of a banning order offence on 23 September 2020. In particular, being in control or managing a house in multiple occupation without the necessary licence contrary to section 72(1) of the Housing Act 2004. For that offence, which was proved in his absence, the respondent was fined £12,000. The applicant seeks a banning order for 5 years. Both the conviction and the banning order application is based on Mr Ferrin's directorship of Simple Properties London Limited ("the Company").

2. The application was received by the tribunal on 14 May 2021. Directions were given on 18 June 2021. The respondent has not participated in these proceedings or responded to any communications from the tribunal. The address for service is the registered office address of the Company and none of the tribunal's letters have been returned. The applicant's hearing bundle was returned to them on two occasions but enquiries as to an alternative address proved fruitless. The tribunal is satisfied that the proceedings have been properly served and therefore was content for the hearing to proceed in the respondent's absence, while acknowledging that he may not know about the proceedings.

3. The application was heard at Cambridge County Court on 21 October 2021. Mr Weller, the in-house lawyer for the applicant was in attendance with his witness, Emma Barker, a Technical Officer in the Residential Team.

The law

4. 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, with an exception to that condition in respect of an application against an officer of a corporate body.

5. Before applying for a banning order, the authority must give the person a notice of intended proceedings; giving the reasons for the application, stating the length of the proposed ban and inviting representations within a period of not less than 28 days ("the notice period") (section 15(3) of the 2016 Act).

6. 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).

7. 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.

8. 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*".

9. 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*".

10. 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.

11. Finally, there are two FTT decisions of relevance in this case: CAM/12UB/HMF/2019/0011, where a Rent Repayment Order was made against the owner of the property at 308-310 Cherry Hinton Road, Cambridge – the property which was the subject of the banning

order offence in this case and LON/00BA/HBA/2020/0011, where a banning order was made against Simple Property Management Ltd and Mr Miguel Cabeo Cespedes following banning order offences in respect of property at Flat 5, 18-18a Acton Street, Camden, London.

The Evidence

12. The applicant relied on the evidence of Emma Barker, contained in her statement dated 13 July 2021 and the documents in their hearing bundle which amounted to some 211 pages. Following complaints about the use of 308-310 Cherry Hinton Road, Cambridge, Ms Barker obtained information from Simple Properties London Ltd and determined that of the 9 rental agreements received, 5 were for tenants occupying the property as their main or principal home for a period of 6 months. It was therefore the view of Cambridge City Council that the property was being operated as an HMO. There was no HMO licence and the Council obtained a conviction from Peterborough Magistrates Court on 23 September 2020 against both Simple Properties London Limted and its sole director Mr Hidalgo Ferrin, who were each fined £12,000 for a breach of section 72(1) of the Housing Act 2004. As Mr Ferrin has subsequently applied to Companies House for the company to be dissolved, the banning order was sought in respect of Mr Ferrin alone.

13. Ms Barker has had no direct contact with Mr Ferrin and has no knowledge of the extent of his involvement with the property, although she described him as the managing agent in her statement. She was unable to explain why, particularly when the tribunal pointed out that there was no mention of the company in the agreements exhibited to her statement, which purported to be bed and breakfast agreements between Simple Properties Management Limited and the "Guest". These agreements referred to a "Host", which may have been Simple Properties London Limited but the Booking Application which was said to confirm the details was not in the hearing bundle.

14. In proceedings reference CAM/12UB/HMF/2019/0011 the evidence was that Simple Properties London Limited had taken an assignment of the lease to 308-310 Cherry Hinton Road in or about June 2019. They had subsequently paid rent to the property owners against whom the tribunal made a RRO, relying on the Upper Tribunal decision in *Goldsbrough v CA Property Management* [2019] UKUT 311. The Court of Appeal subsequently decided in *Rakusen v Jepsen* [2021] EWCA Civ 1150 that as a matter of interpretation, a RRO can only be made against an immediate landlord and therefore *Goldsbrough* is no longer good law, pending the appeal of *Rakusen* to the Supreme Court.

15. Ms Barker researched the company and came across details of their involvement with a licensable HMO in Acton Street, Camden. In particular, she wished to introduce evidence of a previous conviction at

Highbury Corner Magistrates Court on 6 February 2020, which became spent on 5 February 2021. That same property was the subject of the FTT decision reference LON/00BA/HBA/2020/0011, which resulted in a banning order being made against Simple Properties Management Limited and Mr Miguel Cabeo Cespedes on 25 May 2021. Ms Barker stated that Camden were keen for the banning order application to be made against Mr Ferrin due to his link with the others, although no evidence was provided as to whether that was the same model used for 308-310 Cherry Hinton Road.

16. The Notice of Intention to apply for a banning order was served on Mr Ferrin at the registered office address for Simple Properties London Limited on 3 March 2021. The notice relied solely on the conviction at Peterborough Magistrates Court on 23 September 2020, stated that the banning order was to be for at least 5 years and gave Mr Ferrin until 7 April 2021 to make representations. None were received.

17. The hearing bundle contained further details of the offence in respect of 308-310 Cherry Hinton Road, Cambridge. The property had previously been used as a hotel and was in good order, with no fire safety concerns. There was reference to a timber construction in the garden which was also being used for accommodation but no comment was made in respect of its suitability or condition.

18. Prosecution for the banning order offence was authorised on 24 June 2020. The hearing bundle also contained details of the Applicant's procedure for obtaining a banning order. Ms Barker confirmed that the respondent had not been included in the database of rogue landlords and property agents.

The tribunal's decision

19. 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.

20. The Notice of Intended Proceedings referred to in paragraph 16 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 23 September 2020 and the application was not made until 14 May 2021, well after expiry of the period for representations.

21. However, this process, and the timetable for hearing the application means that the banning order offence relied on in the Notice became spent prior to the hearing. The tribunal is satisfied that justice cannot be done without admitting evidence of the conviction at Peterborough Magistrates Court on 23 September 2020 pursuant to section 7(3) of the Rehabilitation of Offenders Act 1974.

22. The tribunal is also satisfied that there is sufficient evidence on a balance of probability that Mr Ferrin was carrying out the business of a residential landlord or property agent, although it notes that as the application is being made against Mr Ferrin as the sole director of Simple Properties London Limited, the tribunal may make a banning order even if it is not so satisfied (section 16(3) of the 2016 Act).

23. Turning to its discretion to make an order in accordance with section 16(4), the first consideration is the seriousness of the banning order offence. As stated above, Mr Ferrin was convicted in his absence and fined £12,000 for failure to have an HMO licence. The statements used in the prosecution refer to 9 occupants in a property with up to 20 bedrooms, 5 of which the council felt evidenced use of the property as an HMO. There were no safety concerns. The sham agreements were troubling, although they named a different company. Without any evidence of aggravating features, the tribunal consider this offence to be moderate.

24. The second consideration is in respect of any previous convictions for banning order offences. As stated above, the MHCLG Guidance is clear that spent convictions should not be taken into account when determining whether to apply for and/or make a banning order. The Notice of Intention also referred only to the conviction at Peterborough Magistrates Court and by this date the earlier conviction was spent. In the circumstances the tribunal considers there is nothing to take into account under this heading.

25. The respondent has also not been included in the database of rogue landlords and property agents.

26. That leaves consideration of the likely effect of the banning order on the person and anyone else who may be affected by the order. It would appear that there are no longer any concerns about the property at 308-310 Cherry Hinton Road and Ms Barker had no information that the respondent was engaged in any other lettings in the Cambridge area. Given his lack of involvement with both their investigation and this application, it is difficult to assess the likely effect of any banning order, other than the implications set out in paragraph 7 above. It is also entirely possible that Mr Ferrin has left the country or that the name is an alias.

27. It is clear that banning orders are aimed at the most serious offenders who rent out unsafe and substandard accommodation. Although the circumstances of the letting of 308-310 Cherry Hinton Road are murky,

involving sham bed and breakfast agreements, there was no evidence of any aggravating factors in terms of the behaviour towards the occupants and indeed no evidence whatsoever of Mr Ferrin's personal involvement, other than his role as sole director of Simple Properties London Limited. It appears that he did co-operate with the council at the outset of the investigation as he sent the documents which were relied on to secure his conviction. The management arm appear to have been more active in terms of the interface with the occupants and Simple Properties Management Limited and its director Mr Cespedes are already the subject of a banning order for 5 and 3 years respectively from 25 May 2021. The council also accept that the property in this case was neither unsafe nor substandard.

28. In the circumstances and for the reasons set out above in paragraphs 12-16, the tribunal is not satisfied that it is appropriate to make a banning order in this case.

Name: Judge Wayte **Date:** 29 October 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).