



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

Case References : **LON/00AU/HBA/2019/0001**

Applicant : **London Borough of Camden**

Respondent : **Mr Cesar De Sousa Melo**

Application : **Application for a Banning Order under s.16
Housing and Planning Act 2016**

Members of Tribunal : **Judge Amran Vance
Mr T Sennett, FCIEH**

**Date and Venue of
Hearing** : **21 October 2019
10 Alfred Place, London, WC1E 7LR**

Date of Decision : **8 November 2019**

DECISION

Decision

1. We make a Banning Order against the respondent for 4 years in the terms set out in the Order that accompanies this decision.

Background

2. This is an application, brought by London Borough of Camden (“Camden”), seeking an order under s.16 Housing and Planning Act 2016 (“the 2016 Act”), against Mr Cesar De Sousa Melo.
3. Numbers in bold and in square brackets below refer to pages in the hearing bundle prepared by Camden.
4. On 4 April 2019, at Highbury Corner Magistrates’ Court [**32**], Mr De Souza Melo was convicted, in his absence, of seven offences, comprising:
 - (a) five offences in respect of Flat 23 Hawkshead, Stanhope Street, London NW1 3RJ, namely:
 - (i) an offence under s.72 Housing Act 2004 (“the 2004 Act”) concerning failure to license it as a House in Multiple Occupation (“HMO”) for which he was fined £2,000; and
 - (ii) four offences under s.234 of the 2004 Act, concerning breach of management regulations in respect of HMOs for which he was fined a total of £8,000; and
 - (b) two offences in respect of Flat B, 290 Gray’s Inn Road, London, WC1X 8EB, namely:
 - (i) an offence under s.72 of the 2004 Act concerning failure to license it as a HMO for which he was fined £2,000; and
 - (i) an offence under s.234 of the 2004 Act, concerning breach of management regulations in respect of HMOs for which he was fined £2,000.
5. Mr De Souza Melo is not the freehold owner of either of these properties. Camden’s understanding was that he entered into tenancy agreements of the properties in question, and then sublet them as HMOs.
6. On 31 May 2019, Camden sent Mr De Souza Melo written notice that it intended to apply to this tribunal for a Banning Order [**28**]. The notice invited him to make representations by 5 July 2019.
7. We are informed that Mr De Souza Melo did not make any representations to Camden, and that he has not contacted or engaged with the council at all since service of the notice of intention.

8. This application was issued on 10 July 2019. Directions were given by the tribunal on 29 July 2019 [20], and the application proceeded to an oral hearing on 21 October 2019. Mr De Souza Melo did not attend that hearing, and nor has not contacted the tribunal, or made any representations in respect of the application, as he was invited to do by the tribunal's directions.
9. Present at the hearing was Mr Sarkis, in house solicitor at Camden, and Mr Vincent Arnold, an Environmental Health Officer employed by Camden. Mr Sarkis confirmed that Camden were seeking a Banning Order on the grounds that Mr De Souza Melo has been convicted of multiple offences that constitute "Banning Order offences" for the purposes of Part 2 of the 2016 Act and that a five-year ban was appropriate.

Statutory provisions

10. The statutory provisions relating to Banning Orders are contained within Chapter 2 of Part 2 of the 2016 Act and, to the extent relevant, are set out in Appendix 2 to this decision.
11. 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.
12. 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.
13. 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.
14. 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.
15. Section 16 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.
16. Section 17 provides that a ban must last at least 12 months, but may contain exceptions to the ban for some or all of the period to which the ban relates. The exceptions may also be subject to conditions. In addition, a person who is subject to a Banning Order that includes a ban on letting may not make an unauthorised transfer of an estate in land to a prohibited person. Nor can a banned person hold an HMO licence or a licence under Part 3 of the Housing Act 2004 in respect of a house. In addition, a HMO licence or Part 3 licence must be revoked if a Banning Order is made against the licence holder. Interim and final management orders may be made in cases where a Banning Order has been made and a property has been let in breach of the Banning Order.
17. 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 2018 Regulations only apply to offences committed after the coming into force of the regulations, on 6th April 2018.
18. For the purposes of this application, the following offences, identified in Item 3 of the Schedule, constitute Banning Order offences, unless the sentence imposed on the person convicted of the offence is an absolute discharge or a conditional discharge:
- (a) offences in relation to licensing of Houses in Multiple Occupation under section 72(1), (2) and (3) Housing Act 2004; and
 - (b) offences in relation to failure to comply with management regulations in respect of Houses in Multiple Occupation under s.234(3) Housing Act 2004.

Camden’s Case

19. Camden’s reasons for seeking a Banning Order are set out in an internal report from Mr Arnold to the Director of Housing Support Services, dated 17 April 2019 [102]. In that report he states that:
- (a) in addition to the five Banning Order offences in respect of Flat 23 Hawkshead and the two Banning Order offences in respect of Flat B, 290 Gray’s Inn Road, Mr De Souza Melo has also received:

- (i) two civil penalty notices, dated 4 December 2018 [130], imposing fines totaling £15,000, for offences committed on 20 June 2018, regarding an overcrowded and dangerous unlicensed HMO at 15 Goldington Crescent, London, NW1 1UA;
 - (ii) a conviction, on 4 April 2019 [35], of one non-Banning Order offence under s.16(2)(a) Local Government (Miscellaneous Provisions) Act 1976, in respect of Flat B, 290 Gray's Inn Road, for failure to comply with requirements served under s.16(1) of that Act, for which he was fined £2,000.
- (b) in total, therefore, Mr De Souza Melo has been convicted, or received Civil Penalty notices in connection with nine Banning Order offences, and has been fined a total of £31,000. This, Mr Arnold suggested, indicated a complete disregard of the legal requirements concerning safety and management of three unlicensed HMOs, including the safety of tenants occupying those properties;
- (c) Mr De Souza Melo was added to the Greater London Authority rogue landlord database in March 2019;
- (d) at Flat 23 Hawkshead, a shoddy partition had been erected in the kitchen/diner to create a sleeping space. This endangered the health and safety of two tenants using that space, whose only means of escape was through the kitchen. This is a seventh-floor flat that had no working smoke alarm, a dangerous electricity installation, and with only one room in the flat having any heating;
- (e) at Flat B, 290 Gray's Inn Road, the tenant's health and safety was compromised because of inadequate fire alarms;
- (f) all tenants occupying these properties were young and/or from overseas, in need, and vulnerable to exploitation through high rents and low housing standards;
- (g) Mr De Souza Melo has failed to communicate with Camden throughout its enforcement action in relation to these properties; failed to attend the Magistrates' Court hearing on 4 April 2019; and has not responded to the two Civil Penalty notices; and
- (h) in all the circumstances, a Banning Order of 5 years was appropriate to deter him from committing further offences and to act as a deterrent to others from doing so. Publicity from the Banning Order would help address the large number of poorly-managed unlicensed HMO's in Camden.

Reasons for Decision

20. We are satisfied that Mr De Souza Melo was, on 4 April 2019, convicted of five banning offences in respect of Flat 23 Hawkshead, and two offences in respect of Flat B, 290 Gray's Inn Road. All those convictions are listed in a memorandum of entries on the register of the Magistrates Court [32], a copy of which was included in Camden's hearing bundle. These offences all constitute Banning Order offences in Item 3 of the Schedule to the 2018 Regulations.
21. We are also satisfied that he was a residential landlord at the time these offences were committed. Exhibited to a witness statement of Ms Aniqah Islam, a graduate Environmental Health Officer at Camden, dated 17 September 2018, is a picture of the first page of a tenancy agreement dated 25 June 2018 [345], entered into between Mr De Souza Melo, as landlord, and Mr Ivan Zhelev, as tenant, for the rental of room 3, at Flat 23 Hawkshead. Ms Islam states that she took this picture when she inspected the property on 14 September 2018, along with Mr Arnold and Mr Adewale Adekoya, an Environmental Health Officer at Camden. Also exhibited, is a witness statement from Mr Zhelev, dated 14 September 2018 [361], in which he confirms that he pays rent of £478 per month to Mr De Melo by bank transfer.
22. We have not been provided with a copy of a tenancy agreement for the rental of Flat B, 290 Gray's Inn Road, but exhibited to a witness statement from Mr Adekoya dated 28 January 2019 is a witness statement from Alane Silva dated 14 September 2018 [436], in which she states that she pays £400 per month to Mr De Souza Melo for the rental of that flat, along with four other persons. Witness statements from three other occupiers are also exhibited, two of whom confirm that they pay rent to Mr De Souza Melo for rental of this flat. These statements were all taken during an inspection of the property that took place on 14 September 2018, attended by Mr Adekoya, Mr Arnold, and Ms Islam.
23. The evidence therefore clearly indicates that Mr De Souza Melo was a residential landlord of both Flat 23 Hawkshead and Flat B, 290 Gray's Inn Road at the time the Banning Order offences were committed. In respect of Flat 23 Hawkshead, a copy of the tenancy agreement he entered into, for rental of that flat, on 9 October 2017, appears in the hearing bundle [233]. It is clear that he then proceeded to sub-let the property as a HMO.
24. We are also satisfied that Camden served him with Notice of intended proceedings in accordance with the requirements of s.15 of the 2016 Act. A copy of the notice appears in Camden's bundle [28] and it correctly sets out the information required by subsections 15(3)(a) to (c) of the Act. It was also given within the six-month window specified in s.15(6). In a witness statement to the tribunal [110], Mr Arnold states that the Notice was also sent to three known email addresses for Mr De Souza Melo [146].
25. The Notice was addressed to Mr De Souza Melo at Flat 56 Gambier House, Mora Street, London, EC1V 8EH. Mr Arnold confirmed to us that this is the only address that it had for Mr De Souza Melo, despite Camden's search of the National Anti-Fraud Network database. It was the address specified as Mr De Souza Melo's address in Mr Zhelev's tenancy agreement, and a tenancy agreement that Mr De Souza Melo entered into with Mr Simone Baldassi, dated 19 April 2018 [126] for Flat 15,

Goldington Crescent. In addition, it was the address at which he was registered on the electoral roll for the period 17 February 2014 onwards [225] as revealed in a search carried out on 6 October 2014. Further, a copy of a letter dated 3 October 2014, apparently from the landlord of Flat 56 Gambier House, confirming that Mr De Souza Melo had been a tenant of that flat since 9 September 2013, appears in Camden's hearing bundle [232].

26. In light of Mr Arnold's evidence that this was the only address known to Camden, and given this was the address given in the two tenancy agreements referred to in the previous paragraph, we are satisfied, that use of this address constituted good service of the Notice on Mr De Souza Melo.

27. At this stage, it is worth noting that 56 Gambier House was also the address given by Camden as Mr De Souza Melo's address in its application notice to the tribunal, and it is the address that the tribunal has used when writing to him. None of the correspondence sent by the tribunal to him, including the tribunal's directions, and notification of the hearing date of the application, have been returned by the postal service as undelivered. We are satisfied that this was the last address for Mr De Souza Melo known to Camden, and that he has had proper notice of this application, the tribunal's directions, and the hearing date. However, as with the enforcement action taken by Camden, and the Magistrates' Court proceedings, he has chosen not to engage in this application.

28. The statutory requirements for making a Banning Order have therefore been met. We have a discretion as to whether to make such an order, and in exercising that discretion, we have had regard to the provisions of s.16 of the 2016 Act, as well as Guidance to Local Authorities concerning Banning Order offences under the 2016 Act, issued by the Ministry of Housing Communities and Local Government in April 2018 ("the Guidance") [44]. Although the Guidance is non-statutory, it is central-government guidance, and we attach significant weight to its contents.

29. 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".

30. Paragraph 3.1 states that:

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

31. 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 when considering the likely effect of the Banning Order on the person who is to be the subject of the order, and anyone else that may be affected by it, as required by s.16(4)(d) regard should 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.

32. Camden have published its own local policy guidance in relation to private sector housing offences [71] which reflects the provisions of the Guidance. However, it lists additional factors to consider when the authority is deciding whether to apply for a Banning Order. One such consideration, which Camden considers relevant in this case, is “sub-letting on a widescale, where an agent has deceived property owners to obtain a flat which they then put into HMO use”.
33. We have no hesitation in determining that it is appropriate for a Banning Order to be made in this case. The Banning Order offences for which Mr De Sousa Melo has been convicted are serious offences that cover two properties. He has been fined a total of £14,000 for those offences. That is a substantial sum that reflects the seriousness with which the magistrates court viewed the offences. We have considered the offences independently of the fines imposed by the Magistrates Court, and are satisfied that they are serious in nature. Mr De Sousa Melo’s offending cannot be categorised as an isolated incident. He was convicted of offences of being in control or management of an unlicensed HMO, contrary to s.72(1) of the 2004 Act, in respect of both Flat 23 Hawkshead and Flat B, 290 Gray’s Inn Road. Whilst there is no evidence that he has any previous convictions relating to housing management, he has been the subject of two civil penalty notices and has been fined a total of £31,000.
34. We accept that he has put the safety of tenants at risk of substantial harm in his partition of the kitchen/diner at Flat 23 Hawkshead and, to a lesser degree, in failing to have working fire alarms at Flat B, 290 Gray’s Inn Road. In our determination, the seriousness of these offences, Mr De Souza Melos’ complete failure to engage with Camden prior to, and after his convictions, his failure to participate in the Magistrates’ Court proceedings, and his lack of engagement in this application, demonstrate a systematic disregard of his legal obligations concerning licensing of HMO’s, and housing management regulations, aimed at safeguarding tenants, and that the making of a Banning Order is clearly justified. We also agree that when deciding whether to make a Banning Order, it is a legitimate to consider the potential deterrent and punishment effect on Mr De Souza Melo, and the deterrent effect on other landlords, and that these factors all weigh in favour of making an order. We acknowledge that Banning Orders should be reserved for the most serious offenders, but are in no doubt that this is one such case.
35. As Mr De Sousa Melo has not engaged in this application, we have no evidence as to how making a Banning Order would impact on his financial circumstances. Nor is there any evidence to suggest that we should consider making any exceptions to a ban, for some or all of the period of the ban. Camden propose a Banning Order for a period of five years, which Mr Arnold said had been chosen, by way of analogy, with the maximum period for which a final management order in favour of a local housing authority can made under s.114(6) of the 2004 Act.
36. In our assessment, the seriousness of the Banning Order offences for which Mr De Souza Melo has been convicted, and the other factors raised in the previous three paragraphs, justify a ban for a significant period. However, in light of Mr Arnold’s

evidence to us at the hearing that the freeholders are now back in control of both Flat 23 Hawkshead, and Flat B, 290 Gray's Inn Road, and that Camden are not aware of Mr De Souza Melo currently being involved in letting out any other properties in the borough, we consider that a ban of 4 years to be appropriate in this case.

Amran Vance

8 November 2019

ANNEX 1

RIGHTS OF APPEAL

1. A written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional office within 28 days after the date this decision is sent to the parties.
3. 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.
4. The application for permission to appeal must state the grounds of appeal, and state the result the party making the application is seeking.

ANNEX 2

Statutory Provisions

Housing and Planning Act 2016

Chapter 2 – Banning Orders

Banning Orders: key definitions

14. “Banning Order” and “Banning Order offence”

- (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)
- (3) In this Part “Banning Order offence” means an offence of a description specified in regulations made by the Secretary of State.
- (4)

Imposition of Banning Orders

15. Application and notice of intended proceedings

- (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.
- (2)
- (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 of the offence to which the notice relates.

16. Making a Banning Order

- (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 (but see subsection (3)).
- (2) A Banning Order may only be made on an application by a local housing authority in England that has complied with section 15.
- (3)
- (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.

17. Duration and effect of Banning Order

- (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.
- (4) A Banning Order may, for example, contain exceptions-
 - (a) to deal with cases where there are existing tenancies and the landlord does not have the power to bring them to an immediate end, or
 - (b) to allow letting agents to wind down current business.