



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

Case Reference : **BIR/00CN/HBA/2020/0002**

Applicant : **Dudley Metropolitan Borough Council**

Representative : **T Holder**

Respondent : **Latif Ur Rehman**

Representative : **Shams Williams**

Type of Application : **Application under section 15 of the Housing and Planning Act 2016 for a banning order**

Date of Hearing : **27 September 2021**

Tribunal Members : **Deputy Regional Judge Nigel Gravells
Mr Robert Chumley-Roberts MCIEH, JP**

Date of Decision : **28 September 2021**

DECISION

1. This is a decision on a preliminary issue raised by the Respondent in relation to an application under section 15 of the Housing and Planning Act 2016 ('the 2016 Act') by Dudley Metropolitan Borough Council ('the Applicant') for a banning order against Mr Latif Ur Rehman ('the Respondent').
2. The Respondent is the landlord of a number of rental properties, including 98/98A Cole Street, Netherton, DY2 9PA ('the subject premises'). The Applicant is the relevant local housing authority.
3. On 7 November 2019, at Wolverhampton Magistrates' Court, the Respondent was convicted of three offences relating to the subject premises, namely that, knowing that an emergency prohibition order under section 43 of the Housing Act 2004 had become operative in relation to the subject premises, the Respondent without reasonable excuse permitted the subject premises to be used in contravention of the order, contrary to section 32 of the Housing Act 2004.
4. The Respondent was convicted in his absence and fined £50,000 for each offence.
5. Following the above convictions, the Applicant proposed to apply for a banning order against the Respondent. On 14 February 2020 the Applicant sent to the Respondent written notice that it intended to apply to the First-tier Tribunal under section 15 of the 2016 Act for a banning order against the Respondent for a period of three years. The notice indicated that the Respondent was entitled to make representations and that any such representations had to be made by 19 March 2020.
6. No representations were received from the Respondent.
7. By application dated 6 May 2020, and received by the Tribunal on 7 May 2020, the Applicant applied to the Tribunal under section 15 of the 2016 Act for a banning order against the Respondent.
8. On 10 June 2020 the Tribunal issued Directions; and, following a request by the Respondent for an oral hearing, on 27 July 2020 the Tribunal issued Hearing Directions.
9. On 30 July 2020 the Respondent's representative informed the Tribunal that the convictions referred to in paragraph 3 above had been set aside on the ground that the Respondent did not receive the papers relating to the prosecution. It is not clear exactly when the convictions were set aside but neither the Tribunal nor the Applicant knew that they had been set aside until 30 July 2020. However, the cases had been relisted for a hearing at Dudley Magistrates' Court on 10 August 2020.
10. The cases were subsequently relisted again for hearing on 7 October 2020, 18 December 2020, 9 February 2021, 14 May 2021 and, finally, 18 June 2021.
11. On 18 June 2021 the Respondent was convicted (following not guilty pleas) for the same three offences referred to in paragraph 3 above and for an additional similar offence. The Respondent was fined £10,000 for each offence.

12. The original application to the Tribunal was repeatedly stayed pending the anticipated Magistrates' Court hearing. Following the convictions on 18 June 2021, the Applicant confirmed that it wished to pursue its application for a banning order against the Respondent and resubmitted the original supporting documentation save only for the amendment of the date of the convictions and the fines imposed.
13. A hearing was held by video conferencing on 27 September 2021. The Applicant was represented by Mr Tim Holder and the Respondent was represented by Mr David Nuttall of Counsel.
14. As a preliminary issue it was argued on behalf of the Respondent (i) that in the circumstances outlined above the Applicant was not entitled to rely on the notice of intent dated 14 February 2020 and the application to the Tribunal dated 6 May 2020 because the convictions which were the pre-conditions for the notice of intent and application had been set aside; and (ii) that, although the Respondent was subsequently convicted of the same offences, the Applicant was required to issue a new notice of intent and make a new application based on the subsequent convictions.
15. The Applicant did not actively seek to challenge Mr Nuttall's arguments and at the hearing even indicated a willingness to withdraw the application.
16. The Tribunal accepts the argument set out in paragraphs 10-19 of Mr Nuttall's skeleton argument and elaborated on at the hearing.
17. In summary, the issue goes to the jurisdiction of the Tribunal. Although the relevant provisions of the 2016 Act (sections 15, 16 and 20) do not expressly deal with the issue raised by the facts of the present case, the Tribunal accepts that those provisions clearly imply that there must be an exact correspondence between (i) the notice of intent, (ii) the subsequent application to the Tribunal and (iii) the convictions on which the notice of intent and the application rely. In the present case, the original convictions were set aside; and, although the Respondent was subsequently convicted of four identical offences, the required correspondence no longer exists.
18. It follows that the application must be held to be invalid and the Tribunal so holds.
19. It is unfortunate that this decision means that the resolution of the issues between the Applicant and the Respondent will be yet further delayed but the decision does not preclude the Applicant from initiating new proceedings based on the Respondent's convictions on 18 June 2021.

28 September 2021

Professor Nigel Gravells
Deputy Regional Judge