



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

Case reference : **LON/00AT/HPO/2016/0009**

Property : **15a Ditton Road Southall Middlesex
UB2 5RZ**

Applicant : **Mr Harpal Singh Lidher**

Representative : **In person**

Respondent : **London Borough of Hounslow**

Representative : **Mr Sukh Bains (Housing
Enforcement Officer)**

Interested person : **-**

Type of application : **Appeal against a Prohibition Order
under paragraph 7(1) of Schedule 2
to the Housing Act 2004**

Tribunal members : **Professor Robert M Abbey
Mr Mel Cairns MCIEH,
(Professional Member)**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of decision : **27 March 2017**

DECISION

Decision of the tribunal

- (1) The prohibition order made by the London Borough of Hounslow on 5th September 2016 in respect of 15a Ditton Road Southall Middlesex

UB2 5RZ is confirmed with variations. The appeal by the applicant is therefore dismissed.

Reasons for the tribunal's decision

Introduction

1. The applicant appealed against the making of a prohibition order under section 20 of the Housing Act 2004 by the London Borough of Hounslow, in respect of a property known as 15a Ditton Road Southall Middlesex UB2 5RZ.
2. The prohibition order was made on 5th September 2016. The appeal to the tribunal was received on 3rd October 2016, directions were issued on 13th October 2016 and the matter was heard on 16th March 2016. The tribunal did not inspect the property as if considered the photographs, documentation and information before it in the trial bundle enabled the tribunal to proceed with this determination.
3. At the hearing, the appellant appeared in person; the respondent was represented by Mr Sukh Bains a housing enforcement officer for the respondent.

Background

4. The property at 15a Ditton Road Southall Middlesex UB2 5RZ has been formed by merging a rear extension with an original single storey back addition of the main house. The accommodation comprises of one room plus a small kitchen, a small bathroom and a wc compartment. The freehold title is owned by the applicant who also owns 15 Ditton Road.
5. On 28th June 2016 the respondent received information regarding a complaint about the condition of the property, relating to a leak in the roof. An inspection was arranged and carried out by the respondent. On the day of the inspection, 5th July 2016, a number of hazards were noticed by Mr Bains who carried out the inspection. In the light of these perceived hazards the respondent decided to serve a prohibition order as it was considered the most appropriate form of action in all the circumstances. The prohibition order is the subject of this appeal
6. The order dated 5th September 2016 prohibits the use of the property as residential accommodation and annexes two schedules as follows:
 - (i) Schedule 1 identifies several hazards assessed under the Housing Health and Safety Rating System (HHSRS) as category 1 and category 2 hazards, namely: excess cold, collision and

entrapment, electrical hazards, flames and hot surfaces etc., damp and mould, food safety, personal hygiene sanitation and drainage and fire and in all cases the deficiencies are described as well as their location within the property;

(ii) Schedule 2 identifies all of the work necessary to deal with the hazards that had been identified.

7. The prohibition order was served on the applicant, his mortgage lenders and the occupier of the property. Following service of the prohibition order, the applicant lodged an appeal dated 2 October 2016.

The law

8. Part I of the Housing Act 2004 (the Act) sets out a regime for the assessment of housing conditions and a range of powers for local authorities to enforce housing standards. Housing conditions are assessed by the application of the Housing Health and Safety Rating System (HHSRS).

9. Where a hazard or several hazards are identified in a property these are rated as either HHSRS category 1 or category 2 hazards. The options for enforcement include, by section 5 of the Act, the power to serve an improvement notice under section 11 or 12 or the making of a prohibition order under section 20 or 21 as appropriate..

10. By section 8 of the Act, the authority must prepare a statement of the reasons for its decision to take the relevant action.

11. A prohibition order is an order which prevents specified residential premises being used for all or any purposes. By section 22 the contents of prohibition orders are prescribed. By section 22(2)(e) the order must specify, in relation to the hazard (or each of the hazards) any remedial action which the authority consider would, if taken in relation to the hazard, result in its revoking the order under section 25. Section 25 requires an authority to revoke an order if it is satisfied that the hazard in respect of which the order was made, does not then exist.

12. An improvement notice is a notice requiring the person on whom it is served to take remedial action in respect of the hazard, for example by carrying out the works.

13. The power to enter premises for the purpose of carrying out a survey or examination of the premises is contained in section 239(3) of the Act. By section 239(5), before entering any premises in exercise of the power is sub-section (3), the authorised person or proper officer must give at least 24 hours' notice of his intention to do so (a) to the owner (if

known) and (b) to the occupier (if any). Where admission to the premises has been sought but refused, then by section 240 of the Act a justice of the peace may by warrant authorise entry onto the premises.

14. Appeals in respect of prohibition orders are dealt with in Part 3 of Schedule 2 to the Act. Paragraph 7 of that schedule gives a relevant person a general right of appeal against service of a prohibition order. Paragraph 8 provides:

“8(1) An appeal may be made by a person under paragraph 7 on the ground that one of the courses of action mentioned in sub-paragraph (2) is the best course of action in relation to the hazard in respect of which the order was made.

(2) The courses of action are:

(a) serving an improvement notice under section 11 or 12 of this Act...”

The grounds of appeal

15. As set out in his hearing bundle, the applicant’s grounds of appeal were set out in his written response and in which he sought to dispute the assessments of some alleged hazards. In some instances the applicant however conceded that defects and deficiencies were present but works could be completed by him or at his direction to address the stated hazards listed by the respondent. In some instances the applicant asserts that the hazard has arisen from the actions of his former tenant who has now vacated the property which presently is unoccupied. Additionally in some instances the applicant is of the view that the hazards ratings given by the council do not justify the imposition of a prohibition order such as in relation to the extent and adequacy of thermal insulation.
16. At the hearing, the tribunal took evidence and submissions from the applicant, in respect of each of the grounds of appeal in turn. The tribunal went through with the parties each and every hazard, each and every deficiency as well as the works required to remedy the listed items so that both parties had the opportunity to provide evidence and make submissions in every instance.

The tribunal’s reasons for rejecting the appeal

17. On hearing the parties and reviewing the bundles we concluded that the property is in an unsatisfactory state and that actionable hazards do clearly exist within the property.
18. The inspection had revealed a catalogue of health and safety hazards that had the potential to cause harm to the occupants. Further and

critically the modest proportions of the accommodation required vacant possession to facilitate the necessary remedial works. The HHSRS Enforcement Guidance issued by the Secretary of State in February 2006 states that a prohibition order might be appropriate:

“where the conditions present a serious threat to health or safety but where remedial action is considered unreasonable or impracticable for cost or other reasons. These other reasons may include cases where work cannot be carried out to remedy a serious hazard with the tenant in residence.”

19. In the present case, the tribunal considers there to be a serious threat to both the health and safety of the occupants and the works needed to remedy the hazards are so extensive and disruptive, that they cannot be carried out with anyone in residence. The applicant was unable to present any meaningful challenge to the hazard ratings assessed by the council. It follows that the council was fully justified in the making of a prohibition order.
20. As and when works are carried out to the property, the applicant can then make an application to revoke the prohibition order. Alternatively, when he has put together a scheme to rectify the defects and deficiencies, this can then be submitted to the respondent council. In all the circumstances, it is not considered that the decision to serve a prohibition order was disproportionate. The appeal is therefore dismissed.
21. However, the tribunal decided to vary the terms of the prohibition order as there were some aspects where the tribunal considered the works required to address a hazard had been duplicated or wording was ambiguous. In these circumstances it was appropriate for the tribunal to vary the content of the order to take account of these aspects.
22. The variations are as follows. If the works required to address the hazard set out in the original order is not mentioned below, then the works required to address the hazard have been agreed by the tribunal without variation.

Schedule 2 Excess Cold (Replacing points 4 and 5 in that hazard section)

Arrange for a suitably qualified surveyor to assess the thermal insulation values of the property’s roof and living room flank wall. Carry out such works as may be recommended to achieve the thermal insulation values required by the Building Regulations. Make good all works disturbed.

Schedule 2 Fire (Replacing first sentence in point 1 in that hazard section)

Take such steps and carry out such works as may be necessary to ensure that electrical wiring, plastic trunking and the gas pipe in the kitchen are not in such close proximity to the burners of any hob or cooker that there is risk of heat damage. All electrical work is to be carried out according to the current IEE Regulations. Work on any gas installation to be carried out by a 'Gas Safe' registered engineer.

Schedule 2 Electric Hazards

Delete the first sentence of the third point regarding the number of sockets.

Schedule 2 Flames & Hot Surfaces

Item number 1 to read "Redesign the kitchen so that the cooker point has sound and level impervious surfaces either side of it". Delete the second item.

Food Safety

- (i) Delete the first item as this is a repeat of 1 under 'Flames and Hot surfaces
- (ii) Change the second item to read "Provide an additional worktop spanning over the washing machine point adjacent to the kitchen door. The worktop to have an impervious finish and to be securely fixed and with mastic sealing gaps to surrounds."

Personal Hygiene etc.

Examine the toilet pan. If found to be cracked supply and fit a suitable replacement.

Schedule 1 Fire And Electrical categories

Remove references to insufficient electric sockets as this is in effect a duplication of the first bullet point under electrical.

23. The annex to this decision sets out rights of appeal available to the parties and there is also an appendix setting out legalisation extracts relevant to this decision.

Name: Professor Robert M
Abbey

Date: 27 March 2017

Annex

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).

Appendix of relevant legislation

20 Prohibition orders relating to category 1 hazards: duty of authority to make order

(1) If—

(a) the local housing authority are satisfied that a category 1 hazard exists on any residential premises, and

(b) no management order is in force in relation to the premises under Chapter 1 or 2 of Part 4,

making a prohibition order under this section in respect of the hazard is a course of action available to the authority in relation to the hazard for the purposes of section 5 (category 1 hazards: general duty to take enforcement action).

(2) A prohibition order under this section is an order imposing such prohibition or prohibitions on the use of any premises as is or are specified in the order in accordance with subsections (3) and (4) and section 22.

(3) The order may prohibit use of the following premises—

(a) if the residential premises on which the hazard exists are a dwelling or HMO which is not a flat, it may prohibit use of the dwelling or HMO;

(b) if those premises are one or more flats, it may prohibit use of the building containing the flat or flats (or any part of the building) or any external common parts;

(c) if those premises are the common parts of a building containing one or more flats, it may prohibit use of the building (or any part of the building) or any external common parts.

Paragraphs (b) and (c) are subject to subsection (4).

(4) The notice may not, by virtue of subsection (3)(b) or (c), prohibit use of any part of the building or its external common parts that is not included in any residential premises on which the hazard exists, unless the authority are satisfied—

(a) that the deficiency from which the hazard arises is situated there, and

(b) that it is necessary for such use to be prohibited in order to protect the health or safety of any actual or potential occupiers of one or more of the flats.

(5) A prohibition order under this section may relate to more than one category 1 hazard on the same premises or in the same building containing one or more flats.

(6) The operation of a prohibition order under this section may be suspended in accordance with section 23

Powers of residential property tribunal on appeal under paragraph 10

15(1) This paragraph applies to an appeal to a residential property tribunal under paragraph 10.

(2) The appeal—

(a) is to be by way of a re-hearing, but

(b) may be determined having regard to matters of which the authority were unaware.

(3) The tribunal may by order confirm, quash or vary the improvement notice.

(4) Paragraphs 16 and 17 make special provision in connection with the grounds of appeal set out in paragraphs 11 and 12.

Powers of residential property tribunal on appeal under paragraph 7

11(1) This paragraph applies to an appeal to a residential property tribunal under paragraph 7.

(2) The appeal—

(a) is to be by way of a re-hearing, but

(b) may be determined having regard to matters of which the authority were unaware.

(3) The tribunal may by order confirm, quash or vary the prohibition order.

(4) Paragraph 12 makes special provision in connection with the ground of appeal set out in paragraph 8.