



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

**Case Reference** : **LON/00AG/HPO/2017/0012**

**Property** : **Basement Flat, 119 Kings Cross  
Road, London WC1X 9NH**

**Applicant** : **Mr Michael McMahon**

**Representative** : **Mr R Granby of Counsel**

**Respondent** : **London Borough of Camden**

**Representative** : **Mr E Sarkis, Solicitor (in-house)**

**Type of Application** : **Appeal under the Housing Act 2004  
against a Prohibition Order**

**Tribunal Members** : **Judge P Korn  
Mr P Roberts DipArch RIBA**

**Date and venue of  
Hearing** : **21<sup>st</sup> December 2017 at 10 Alfred  
Place, London WC1E 7LR**

**Date of Decision** : **26<sup>th</sup> January 2018**

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**DECISION**

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## **Decision of the Tribunal**

The decision of the local housing authority is hereby confirmed, and consequently the prohibition order itself is confirmed.

## **Introduction**

1. The Applicant is appealing pursuant to paragraph 7(1) of Schedule 2 to the Housing Act 2004 (“**the Act**”) against a decision of the Respondent to serve a prohibition order on him in respect of the Property.
2. The prohibition order is dated 17<sup>th</sup> August 2017 and prohibits the use of the Property as living accommodation. The Property is a mid-terrace basement flat below a restaurant. The prohibition order specifies lighting and fire hazards as being the relevant hazards and lists the deficiencies giving rise to those hazards as being the following:-

### Lighting

- Only two windows within flat.
- Window to front bedroom only receives borrowed light as it opens directly onto internal staircase.
- Window in rear bedroom opens into yard of neighbouring property – limited outlook and limited light due to height of property next door.
- The lounge, kitchen, bathroom and inner corridor have no means of natural lighting.

### Fire

- Kitchen located on means of escape in corridor, creating two inner rooms.
  - Windows within both bedrooms not adequate to be used as escape windows and do not lead to a place of safety.
  - Missing smoke detectors to both bedrooms and missing heat detector to kitchen.
  - Recent water damage to light fittings.
  - Cracks to ceiling plaster affecting fire separation due to water penetration from above and missing/loose fittings for heat and smoke detectors.
  - No fire blanket to kitchen.
3. Prior to the hearing the Tribunal inspected the Property in the presence of the parties.

### **Applicant's case**

4. In his written statement of case the Applicant states that the risk of fire and the lack of light have both been overstated by the Respondent and that there is either no actionable hazard in each case or alternatively only a category 2 hazard. In the circumstances the most appropriate remedy is a hazard awareness notice, or at most an improvement notice.
5. At the hearing, Mr Granby conceded on behalf of the Applicant that a fire hazard did currently exist. However, the Applicant considered that the problem could be remedied by relocating the kitchen to the back room and by installing proper fire doors in every room.
6. As regards the lighting hazard, the Applicant did not accept that it was as severe as had been suggested by the Respondent. Mr Granby referred the Tribunal to a report in the hearing bundle from Mr Paul Salter of HY Genisys Environmental Health Consultancy Services. That report refers to the availability of various systems which are able to allow natural light to enter areas of buildings that previously would not have had natural light. It further states that the installation of a Hybrid Luminaire type system, which can provide full visible spectrum sunlight with energy-efficient LED lighting, would help with any potential health issues caused by poor lighting. The enlarging of the current window would also increase the borrowed light to the front bedroom.
7. As regards the Respondent's calculations in relation to the lighting hazard, the Applicant did not accept that the risk of harm could be as high as 1 in 1 as this would mean that harm was inevitable.
8. Mr Granby submitted that in relation to the lighting hazard the issue was what was a proportionate remedy given the nature of the risk identified, and he argued that the risks associated with lighting hazards were more long term and subtle than certain other types of hazard.

### **Respondent's case**

9. In written submissions, Mr Jack Kane, an environmental health officer, summarises the background to the service of the prohibition order and comments on the Applicant's grounds for appeal. Mr Kane states in relation to the fire hazard that according to the HHSRS Operating Guidance around half of all domestic fires relate to cooking appliances and that over 65% of fires start in the kitchen. The location of the kitchen on the means of escape and the lack of an alternative escape route mean that if a fire were to start in the highest risk room there would be no protected route to a place of safety for the occupiers of any of the rooms. In his view the window in the rear bedroom would not be suitable as an escape window as it does not lead to a place of ultimate

safety, as the yard onto which it leads is enclosed with no access gate. Furthermore, paragraph 14.2 of the LACORS Housing Fire Safety Guidance states that if there is no practical way of avoiding escape into a courtyard or back garden from which there is no exit then the escape area should be at least as deep as the building is high, and this is clearly not the case here. In any event, the Applicant has no control over the yard.

10. In addition, states Mr Kane, Ms Kirsty McLean from the London Fire Brigade has provided a letter (copy in the hearing bundle) expressing her serious concerns regarding the use of the Property as residential accommodation.
11. Mr Kane adds in written submissions that proposals have been discussed with the Applicant for the relocation of the kitchen into the rear bedroom and for the carrying out of other works to ensure the proper fitting of suitably resistant fire doors in each room. Mr Kane accepts that such works would significantly reduce the fire risk.
12. Regarding the lighting hazard, Mr Kane quotes paragraph 13.05 of the HHSRS Operating Guidance as stating that inadequate natural light can cause depression and other psychological effects and that the worst problems are often found in dwellings which are located wholly at basement level, as is the case here. He states that it was a sunny day when he visited the Property on 31<sup>st</sup> August 2017, and yet when the artificial lights were turned off the basement flat was very dark and normal domestic tasks could not have been carried out. He also quotes the World Health Organisation website as stating that exposure to natural light is important for vitamin D production, sleep cycle regulation and mood. In addition, he quotes the National Health Service website as stating that a lack of sunlight might prevent the hypothalamus (a part of the brain) from working properly, which in turn could cause drowsiness and depression. When he carried out his calculations he concluded that the lack of natural light was so severe that the likelihood of a harm outcome within the following 12 months was rated by him as 1 in 1.
13. Mr Kane adds in written submissions that there are only two windows within the Property; one in the front bedroom opening directly onto a stairway (at basement level) and the other in the rear bedroom opening into the yard of the neighbouring property. The height and proximity of the neighbouring property severely reduces the amount of natural light in the rear bedroom, and certain protrusions in that bedroom impact further still on the amount of light received on the other side of the room. In addition, the front window of the restaurant at ground level has a roller shutter which is closed when the restaurant is closed, and this further reduces the amount of light available to the basement.

14. In terms of methodology of assessing the seriousness of the lighting hazard, Mr Kane states that the main tool is through the Housing Health and Safety Rating System together with logical assumptions on the part of the relevant officer, but the Respondent also uses historical methods of measurement as a guide to assessing the likely impact of any nearby obstruction on the amount of natural light available. He also states that the room containing the only window providing natural light was measured, as was the window itself, and the window was found to be less than one-twentieth of the floor area of the room.
15. As regards Mr Paul Salter's recommendations relied upon by the Applicant, Mr Kane comments in written submissions that Mr Salter has mentioned a product which is available on the market to help alleviate problems with lighting but has not proposed a schedule of works to remove or reduce the hazard. He also states that Mr Salter's recommendations would not prevent the Property from suffering from a severe lack of natural light and that the Property would still have a very limited outlook from only one window. Mr Kane also refers to the similarities between this Property and the property used in an HHSRS worked example for lighting. That property is also a two bedroom basement flat suffering from a severe lack of natural light and outlook, and the likelihood of harm in that worked example was also rated as 1 in 1.
16. At the hearing Mr Kane said that serving a prohibition order was the most appropriate course of action as in his view there were no practicable works available to tackle the deficiencies giving rise to the lighting hazard. The Applicant's solution, based on Mr Salter's recommendations, was very light on detail and no detailed report was available.

#### *Cross-examination of Mr Kane*

17. Mr Granby questioned whether the likelihood of harm in respect of the lighting hazard really could be 1 in 1, but Mr Kane's view remained that harm was extremely likely to occur. Mr Granby put it to Mr Kane that there could in principle exist a situation in which merely serving a hazard awareness notice was the appropriate course of action in response to the existence of a hazard. Mr Kane accepted this.
18. Mr Granby also referred Mr Kane to the list in paragraph 13.05 of the HHSRS Enforcement Guidance of health conditions which can be caused by inadequate light and put it to him that not all of these applied in this case. Mr Kane accepted this too.

## **Relevant statutory provisions**

### 19. Housing Act 2004

#### Section 5

- (1) *If a local housing authority consider that a category 1 hazard exists on any residential premises, they must take the appropriate enforcement action in relation to the hazard.*
- (2) *In subsection (1) “the appropriate enforcement action” means whichever of the following courses of action is indicated by subsection (3) or (4) – (a) serving an improvement notice under section 11; (b) making a prohibition order under section 20; (c) serving a hazard awareness notice under section 28 ...”.*
- (3) *If only one course of action within subsection (2) is available to the authority in relation to the hazard, they must take the course of action which they consider to be the most appropriate of those available to them.*
- (4) *If two or more courses of action within subsection (2) are available to the authority in relation to the hazard, they must take that course of action.*

#### Section 20

- (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) of section 22.*

#### Section 22

- (1) *A prohibition order under section 20 or 21 must comply with the following provisions of this section.*

- (2) *The order must specify, in relation to the hazard (or each of the hazards) to which it relates – (a) whether the order is made under section 20 or 21, (b) the nature of the hazard concerned and the residential premises on which it exists, (c) the deficiency giving rise to the hazard, (d) the premises in relation to which prohibitions are imposed by the order ... and (e) any remedial action which the authority consider would, if taken in relation to the hazard, result in their revoking the order under section 25.*
- (3) *The order may impose such prohibition or prohibitions on the use of any premises as – (a) comply with section 20(3) and (4), and (b) the local housing authority consider appropriate in view of the hazard or hazards in respect of which the order is made.*
- (4) *Any such prohibition may prohibit use of any specified premises, or any part of those premises, either – (a) for all purposes, or (b) for any particular purpose, except (in either case) to the extent to which any use of the premises or part is approved by the authority.*

#### Schedule 2

- 7(1) *A relevant person may appeal to the appropriate tribunal against a prohibition order.*
- (2) *Paragraph 8 sets out a specific ground on which an appeal may be made under this paragraph, but it does not affect the generality of sub-paragraph (1).*
- 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 ... (b) serving a hazard awareness notice ... (c) making a demolition order ...”.*
- 11(1) *This paragraph applies to an appeal to the appropriate 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.*
- 12(1) *This paragraph applies where the grounds of appeal consist of or include that set out in paragraph 8.*
- (2) *When deciding whether one of the courses of action mentioned in paragraph 8(2) is the best course of action in relation to a particular hazard, the tribunal must have regard to any guidance given to the local housing authority under section 9.*

### **Tribunal's analysis**

20. In relation the lighting issue, the Respondent has in our view provided very persuasive evidence of the existence of a category 1 hazard on the Property. Mr Kane is a qualified environmental health officer who has inspected the Property, has assessed the nature of the hazard and has calculated the severity of the hazard and the likelihood of harm arising from it. He has considered the HHSRS Operating Guidance (including worked examples) and – in relation to the nature and potential severity of the risks posed by a lack of natural light – the views of the World Health Organisation and the National Health Service. His inspection took place in ideal conditions, namely on a sunny day, and his findings are consistent with our own findings on inspection.
21. The Applicant's evidence on the nature of the lighting hazard and on the likelihood of harm is very thin. The Applicant suggests that the Respondent is overstating the position but offers no real evidence in support of his own position. Whilst we accept that one could arguably take issue with a rating of 1 in 1, given that this indicates absolute certainty of harm within a 12 month period, we are nevertheless satisfied on the basis of the evidence that harm to an occupier within such 12 month period would be extremely likely.
22. The Applicant has suggested that a hazard awareness notice might be a more appropriate response to the lighting hazard by the local housing authority. Whilst we accept that there could in theory be circumstances in which service of a hazard awareness notice was the most appropriate course of action, the present case is one in which such a course of action would be manifestly inadequate. There exists a category 1 hazard with an extreme likelihood of harm to any occupiers, and merely to notify the Applicant of the existence of the hazard whilst allowing the Property to be occupied would on the facts of this case have been a serious abdication of responsibility on the part of the Respondent.



23. As to whether service of an improvement notice would have been a more appropriate remedy, the Applicant's position is based on a recommendation contained in Mr Salter's report. However, Mr Salter's comments do not in our view go much further than merely suggesting a possible option which might make some difference to the situation. As the Respondent points out, Mr Salter does not specify a schedule of works. In addition, he does not even assert that such a course of action would cause the hazard to cease to exist or even to cease to be a category 1 or category 2 hazard, and he provides no evidence which could be used to support any such assertion, had it been made.
24. Mr Granby for the Applicant has suggested that the harms caused by lighting hazards are more long term and subtle than certain other harms. However, whilst such an argument might have a superficial attraction for a layman it does not deal with the Respondent's expert evidence regarding the likelihood of harm in the short term, and nor does it counter in a serious way the expert views expressed by the World Health Organisation and the National Health Service regarding the potential seriousness of that harm. As regards his submission that not all of the health conditions referred to in paragraph 13.05 of the HHSRS Enforcement Guidance apply in this case, that is true but there is no suggestion that the Respondent is relying – or needs to rely – on every single one of those conditions applying.
25. In relation to the provisions of section 20 of the 2004 Act, there is no evidence or suggestion that there is any management order in force in relation to the Property. We are satisfied that the Respondent has complied with the relevant provisions of section 22 of the 2004 Act. In deciding whether an alternative course of action would have been the best course of action in relation to the lighting hazard we have had regard to the relevant guidance for local housing authorities and the Respondent's evidence in relation to this.
26. In conclusion, therefore, we consider that the service of a prohibition order was, and remains, (a) a course of action available to the Respondent and (b) the most appropriate course of action in the circumstances to deal with the lighting hazard.
27. In relation to the fire hazard, we note that, after initially suggesting that the hazard could be dealt with merely by the service of a hazard awareness notice, the Applicant then offered to carry out certain works which might form the basis of an improvement notice. In principle the Respondent has agreed that the moving of the kitchen to what is currently the rear bedroom, coupled with the installation of suitably resistant fire doors in each room, should alleviate the fire hazard, and in principle we accept that this could be sufficient provided that a proper schedule of works was agreed. However, as we have determined that the service of a prohibition order was and is the most appropriate course of action to deal with the lighting hazard, and as we are

therefore confirming the prohibition order, we do not consider it necessary or appropriate to state whether we would have confirmed the prohibition order if the only hazard had been the fire hazard.

### **Cost applications**

28. There are no cost applications.

**Name:** Judge P Korn

**Date:** 26<sup>th</sup> January 2018

### **RIGHTS OF APPEAL**

- A. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) a written application for permission must be made to the First-tier Tribunal at the regional office dealing with the case.
- B. 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.
- C. If the application is not made within the 28 day time limit, such application must include a request for extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
- D. 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.