



Case Reference : **LON/00AQ/HPO/2018/0006**

Property : **4 Gordon Gardens, Edgware,
Middlesex HA8 5HG**

Applicant/Appellant : **Mr. Chun Pang Chow**

Representative : **Mrs Annie Luong**

Respondent : **The London Borough of
Harrow**

Representative : **Mr. Mohammad Beyki, in-
house solicitor**

Type of Application : **Appeal against a Prohibition
Order**

Tribunal Members : **Judge Tagliavini
Mr. Mel Cairns MCIEH
Mr. N Miller**

**Date and venue of
hearing.** : **14 September 2018
10 Alfred Place, London
WC1E 7LR**

Date of Decision : **19 October 2018**

DECISION

The tribunal decides

- I. The appeal is allowed as the Tribunal is not satisfied that the Respondent has correctly assessed the property or the HHSRS hazards in accordance with official 'Operational Guidance' and so the consequential enforcement decisions cannot be relied upon. The Prohibition Order Notice dated 30 April 2018 is therefore quashed and the appeal is allowed.**
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The application

2. This an application dated 21 May 2018 seeking to appeal the Prohibition Notice ("the Notice") dated 30 April 2018 made under the provision of section 20 of the Housing Act 2004 ("the 2004 Act") served on the Appellant by the Respondent. The Notice asserted that a number of category 1 hazards existed on the "entire curtilage" of the subject property of 4 Gordon Gardens, Edgware, Middlesex HA8 5HG ("the property") consisting of issues in relation to Excess Cold; Crowding and Space; Lighting; Domestic Hygiene, Pests and Refuse; Food Safety; Personal Hygiene Sanitation and Drainage; Falling on Level Surfaces; Electrical Hazards and Fire. In addition, the Notice specified a category 2 hazard that was said to exist at the property by reason of issues relating to the hazard of 'Entry by Intruders'.

The inspection

3. Before the hearing of the appeal the tribunal visited the property and carried out an inspection in the presence of representatives of both parties. The property comprises a 1930s chalet style detached bungalow which has had several alterations and extensions. In addition, a separate detached single storey shed type structure of comparatively recent construction has been built in garden. . At the time of the inspection it was said by the Appellant that only Ms Luong lived there with her son (on the ground floor) with Mrs Luong's sister and her family occupying a self contained flat constructed in the first-floor loft area.

The hearing

4. At the hearing of the appeal the tribunal was provided with a number of documents from the Appellant and a further bundle from the Respondent which included a large number of photographs of the property both internally and externally.

5. The appeal was held as a rehearing and the Respondent asked to explain to the tribunal how it had reached its decision to serve the Notice on Mr. Chow. The Respondent relied upon its Notice and Statement of Reasons for the Service of a Prohibition Notice together with a Statement of Case dated 31 August 2018 and a witness statement of Mykia Angus BSc (Hons) ACIEH dated 30 August 2018.
6. In its Statement of Case the Respondent asserted that the property is a dwelling or HMO which is not a flat by design but at the time of the Notice was divided into 8 self-contained units and being let separately to multiple occupants, as demonstrated in the plan of the layout of the property. The hazards identified in the Notice affect the buildings and the external common parts. The multiple category 1 hazards found made it unsuitable for any form of enforcement action to be taken other than a Prohibition Order Notice. In taking this view the Authority had had regard to the nature and extent of the hazards, the risks posed to occupiers and visitors and the Appellant's refusal to cooperate with the Respondent in identifying and remedying the hazards – this despite a reduction to 5 self-contained units found on a reinspection on 15 May 2018.
7. In oral evidence to the tribunal in which she also relied upon her witness statement Ms Angus told the tribunal that no planning permission had been granted to Mr. Chow or any predecessor in title for alterations to be made to the subject property. Although planning permission had been applied for in respect of the "Conversion of the loft space to flat" in August 2015 this was refused in 2016 with no appeal being made.
8. As the property was in an area of the London Borough of Harrow's Designated Selective Licensing Areas, an HMO license was required but despite checks being made, no licence was found to have been applied for by or granted to Mr. Chow. Subsequently, an inspection was carried out of the property which was found to have been significantly extended by the conversion of the original bungalow into 5 flats and with 3 more created in the later side building. All constructed without planning permission or building regulations approval. Numerous defects and deficiencies were noted throughout the property. The inspection had revealed a lack of fire detection devices and proper fire safety separation together with a lack of a safe means of exit in the case of a fire. There was a lack of suitable fixed heating systems with a number of rooms being served by plug-in electric heaters and only a small number of rooms with a fixed heating system. Compounding matters the thermal insulation values (particularly of the side building) were assessed as inadequate. In addition, there were wash hand basins in spaces 'parading' as kitchens; some walls were poorly constructed and scorching was observed to walls from overloaded electrical sockets. Internally and externally, there were a number of trip hazards, electrical wiring was exposed to

the elements and external walls were of insufficient thickness. Other matters were also particularised.

9. Ms. Angus told the tribunal that she had carried out a Housing Health and Safety Rating System (HHSRS) assessment which identified the hazards included in the Notice. On 27 March 2018 a Prohibition Order Representation Form was sent to Mr. Chow and subsequently a remade/re-issued Prohibition Order was sent which included the words indicating that the prohibition was use of the entire property for “sleeping and/or living” purposes, which was not included on the original notice.
10. On questioning by the tribunal Ms Angus accepted that the ‘Operating Guidance’ required individual assessments of each unit in an HMO and so there should be 8 HHSRS assessments carried out (one for each self-contained unit of accommodation) and 8 individual notices, instead of the one assessment and one Notice relied upon by the Respondent. Ms Angus accepted that she had amalgamated the hazards found in each unit on inspection into the Notice and was unable to explain to the tribunal how each unit had been separately rated and was therefore unable to identify which unit suffered from which hazard and to what degree in accordance with the HHSRS guidance. She also accepted that the Notice contained other important defects. In particular it had erroneously included inappropriate defects for the hazards being rated (e.g. fire safety issues under the ‘excess cold’ hazard). The claimed descriptions of defects and deficiencies also lacked a suitable level of detail to assist in identifying and remedying the hazards. Ms Angus told the tribunal that the Respondent was willing to work with Mr. Chow to ensure the occupiers safety.

The Appellant’s case

11. In support of Mr. Chow’s appeal the tribunal heard oral evidence from Dr Saber Khan of Le Baron Haussman Chartered Surveyors who had carried out a survey and who it was stated were appointed to assist the Appellant in this dispute with Respondent (see undated Reasons for the appeal) which he accepted he had drafted with Mr. Chow.
12. However, Dr Khan told the tribunal that he had written a final report dated 30 June 2018 after his inspection on 10 June 2018 for the purposes of a sale of the property. Dr. Khan accepted he was unfamiliar with HHSRS and the identification and categorisation of hazards but asserted that on his inspection he did not identify 8 HMO units and signs of overcrowding. Dr. Khan told the tribunal that the Respondent had failed to engage in constructive dialogue with the Appellant and that this matter could have been satisfactorily dealt with other than by way of a Prohibition Notice. Dr. Khan stated that he regarded the property as requiring a “lot of work” as there were a number of serious

issues apparent at the property including poor thermal insulation and space heating provision..

13. The tribunal also heard oral evidence from Mr. Martin Spanswick (a family friend), Mrs Annie Luong and her adult son Mr. Jin Yang. This evidence took issue with the lack of notice given by the Respondent for their visits, their forced entry and overly aggressive attitude. They asserted that the property was used for family members and friends only.

The tribunal's decision

14. On inspection the tribunal found only Mrs Luong and her son to be in physical occupation of the property, although there was evidence of the first-floor loft area being occupied. The tribunal accepted that Mr. Spanswick was temporarily staying at the property as a guest. However, the tribunal found that the property showed persuasive signs of having been in multiple occupation previously due to the large number of shower rooms and toilets installed making most rooms ensuite and signs of previously installed kitchen areas (now removed) having been in situ. The tribunal found the property to be significantly lacking in thermal insulation as several added exterior walls were too thin. ; There was also a lack of suitable fixed space heating and fire safety arrangements were inadequate.. The tribunal determined that the property had been significantly altered and extended (without planning permission or regard to building regulations) to accommodate 8 households and rejected the Appellant's assertions to the contrary. We were also satisfied that the hazards identified by the Respondent in its inspections were present.
15. However, in the absence of eight Prohibition Order Notices specific to the eight identified self-contained units or a coherent explanation as to how each hazard identified for each unit had been rated, the tribunal finds that the Prohibition Notice relied upon by the Respondent to be fundamentally flawed. Therefore, the tribunal quashes this Notice and allows the Appellant's appeal.

Signed: Judge LM Tagliavini

Dated: 19 October 2018