



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

**Case reference** : **LON/00AD/HPO/2022/0005**

**HMCTS code  
(paper, video,  
audio)** : **V: CVPREMOTE**

**Property** : **Flat 3, 144 Upper Wickham Lane,  
Welling, Kent DA16 3DP**

**Applicant** : **B and T Estates Limited**

**Representative** : **Ms Nicola Strachan, counsel**

**Respondent** : **The London Borough of Bexley**

**Representative** : **Mr Robert Seepersad, EHO**

**Type of application** : **Appeal against a Prohibition Order -  
Schedule 2, para. 7 (1) of the Housing  
Act 2004**

**Tribunal  
member(s)** : **Judge Tagliavini  
Mr A Lewicki BSc(Hons) FRICS MBEng**

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

**Date of decision** : **7 March 2023**

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**DECISION**

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**Covid-19 pandemic: description of hearing**

This has been a remote video hearing which has been consented by the parties. The form of remote hearing was V: SKYPEREMOTE. A face-to-face hearing was not held no-one requested the same and all issues could be determined in a remote hearing. The documents that the Tribunal were referred to are in bundles provided by the parties, the contents of which have been noted.

## **The tribunal's summary decision**

- (1.) The tribunal finds the Prohibition Notice dated 5 July 2022 is invalid and therefore quashes it pursuant to Schedule 2, Part 3, para. 11 of the Housing Act 2004.**
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### **The application**

1. This is an appeal against a Prohibition Order dated 5 July 2022 and purporting to prevent the use of the subject premises for living and sleeping accommodation due to a number of Category 1 and 2 hazards (unspecified) being identified. Schedule 1 of the Prohibition Order identified the hazards as: Crowding and Space; Excess heat & lighting; Excess cold; Noise; Electrical Safety and Fire Safety and Schedule 2 stated there were no works that would overcome the issues surrounding the windows and space to enable this property to be used as a habitable dwelling.

### **Background**

2. The subject premises comprise a studio flat with kitchen area and bathroom/w.c. in a converted industrial storage unit ('the premises'). It is accepted the conversion was carried out by virtue of Permitted Development rights prior approval having been sought and granted by the respondent. It is also not disputed the premises were occupied by a tenant to whom a housing duty was accepted by the respondent and with their knowledge and acquiescence, a bond having been paid by the respondent's Housing and Resettlement Team.

### **The respondent's case**

3. As this application was required to be held by way of a re-hearing the respondent was required to establish how it reached the conclusion a Prohibition Notice was appropriate. In support of the respondent's case, reliance was placed on a 'Statement of reasons opposing the appeal' and documents identified as Parts 1 to 11. Mr Seepersad also gave evidence to the tribunal although no written witness statement was provided.
4. Mr Seepersad told the tribunal he had been responsible for the service of the Prohibition Order having visited the property and reviewed his findings with his colleagues before he issued it. Mr Seepersad accepted the reasons for serving the Prohibition Order on the premises had not been given.

5. Mr Seepersad also accepted he had not categorised the hazards identified in the Prohibition Order or Schedule, although asserted the premises suffered from; (i) being too small (crowding and space); (ii) having excess heat and insufficient lighting (inadequate ventilation and lack of natural light as windows were inaccessible having been placed at a high level); (iii) excess cold (electric heater damaged and too close to wall) (iv) too noisy (rain falling on the tin roof) and (v) lack of electrical (gap around electrical socket in kitchen area) and (vi) lack of fire safety (smoke alarm covered).
6. Mr Seepersad told the tribunal the hazards identified the crowding and space, lack of ventilation and excess heat and cold and fire safety were category one hazards and electrical hazards and excess cold, noise, lighting as category 2 hazards and produced his calculations he had carried out. Mr Seepersad told the tribunal that in carrying out the likelihood assessment he had used his own judgement as well as referring to the operational guidelines for the implementation of the Housing Health & Safety Rating System (England) Regs 2005 ('the 2005 Regs.'). Mr Seepersad also accepted Reasons for the service of the Notice had not been given to the applicant.
7. Mr Seepersad told the tribunal that the respondent had refused mediation as he did not believe there was any way to resolve the issues other than by prohibition and was looking at it from a different perspective from that of the planning department.
8. In submissions, Mr Seepersad stated that it was not necessary for the Prohibition Notice to identify if it were served pursuant to section 21 or section 22 of the Housing Act 2004 and was not required to say which were Category 1 or Category 2 items in the Prohibition Order.

### **The applicant's case**

9. The applicant relied upon a bundle of 81 (electronic) pages and a Written Summary. In his oral evidence to the tribunal Mr Tzvi Roth (of Blufox Management Ltd, managing agents for the premises) adopted Mr Israel Taub's two-page witness statement. Mr Taub's continued presence having been excused by the tribunal at the outset of the hearing.
10. Mr Roth told the tribunal he had from the outset been reluctant to let the premises to Mr Parker due to his disabilities, only finally doing so at the insistence of the respondent's housing/resettlement department. Mr Roth stated that the tenant's lifestyle had been responsible for the covering up of the smoke alarm; hoarding items, installed a larger bed and had utilised the space in a less than optimum layout. The heater could be relocated and the gap around the electrical socket had been remedied.

11. Mr Roth told the tribunal that a number of other occupied the premises without complaint and permission for use as habitable accommodation had been given by the respondent's planning department and a tenant placed in it at the insistence of the respondent's housing department.
12. Ms Strachan submitted the Prohibition Order did not comply with the requirements of the Housing Act 2004 and was entirely defective.

### **The tribunal's decision and reasons**

13. The tribunal finds the Prohibition Order served on the applicant does not comply with the requirements of the Housing Act 2004. Section 22 of the Housing Act states:

*(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 (see subsections (3) and (4)), 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.*

14. The tribunal finds Prohibition Order failed to specify, in relation to each hazard whether it relates to an order made under section 20 (category 1 hazards) or section 21 (category 2 hazards) and any remedial action in respect of each of them. Consequently, the tribunal finds the Prohibition Order date 5 July 2022 is invalid.
15. Further, the tribunal finds that the manner in which Mr Seepersad carried out the likelihood assessment lacked objectivity and failed to have regard to the respondent's own policy document in the categorisation of the hazards.
16. The tribunal also found the various departments within the respondent's borough were at odds with each other and found the

insistence of the housing/resettlement department that Mr Parker be offered accommodation in the premises wholly inconsistent with Mr Seepersad's approach.

17. In conclusion, the tribunal exercises its powers under Schedule 2, Part 3, para. 11 of the Housing Act 2004 and quashes the Prohibition Notice. The tribunal does not in the absence of any evidence as to how improvements might be carried out, find it appropriate to substitute any alternative Order. However, the tribunal considers that the respondent may wish to consider whether the hazards identified can in fact be remedied.
18. Any application for costs under rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules must be made in writing within 28 days of the date of this Decision with a copy to the other party. Any Response must be received by the tribunal within 21 days of the application for costs (with a copy to the other party). The tribunal will thereafter make its decision on costs on the papers.

Name: Judge Tagliavini

Date: 7 March 2023

### **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).