



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

Case Reference : **BIR/OOFY/HPO/2018/0004**

Property : **Flat over 116 Hucknall Road, Nottingham,
NG5 1AD**

Applicant : **Jenner Bailey Limited**

Respondent : **Nottingham City Council**

Type of Application : **An appeal against a prohibition order under
Schedule 2, paragraph 7 (1) of The Housing
Act 2004**

Tribunal Members : **Judge S McClure
Mr A Lavender, MCIEH**

Date of Hearing : **26 November 2018
Nottingham Justice Centre**

Date of Decision : **15 January 2019**

DECISION

The issue

1. This case is about whether the internal stairs from the first floor to the second floor of Flat Over 116 Hucknall Road, Nottingham, NG5 1AD (“the Property”) are of such a design, including steepness, so as present an unacceptable risk, and therefore to prohibit its use by occupants of the Property.
2. Following an inspection of the Property on 6 September 2018, under the statutory provisions of the Housing Act 2004 (“the Act”), the local authority, Nottingham City Council (“the Respondent”), made a Prohibition Order, dated 28 September 2018, which prohibited the use of the staircase to the second floor because the staircase gave rise to a Category 1 hazard.
3. Jenner Bailey Limited (“the Applicant”), which owns and manages the Property, has appealed to the tribunal against the Prohibition Order, and this decision is a determination of the appeal.

The statutory scheme

4. The Act contains a system for assessing housing conditions and enforcing housing standards. A local authority has a duty to keep the housing conditions in their area under review, and they may (and sometime must) carry out inspections of specific houses to ascertain whether any hazards exist at that house. Ascertaining a hazard is carried out using a process of hazard scoring, under which hazards of specific types may be identified as either a Category 1 or a Category 2 hazard. The process of hazard scoring is the Housing Health and Safety Rating System (HHSRS).
5. If a Category 1 hazard is identified, the local authority must then take appropriate enforcement action. There is a list of available actions in section 5 of the Act. The list includes a Prohibition Order under section 20.
6. Where a local housing authority decides to take enforcement action, section 8 of the Act provides that they must prepare a statement of the reasons for their decision to take the relevant enforcement action.

Inspection

7. The tribunal inspected the Property on the morning of 26 November 2018. Present at the inspection were Ms Jackson and Ms Conneally from the Applicant company, and Ms Green, Solicitor, Mr Matthews, Principal Environmental Health Officer and Ms May, Graduate Environmental Health Officer, all employed by the Respondent. Also present, were the current tenants of the Property, Mr and Mrs Avison (“the Tenants”).
8. The Property is a 2 storey maisonette above a ground floor shop. It has its own ground floor access via a rear yard. Immediately beyond the flat entrance door is a staircase to the first floor. There are no concerns in respect of this staircase. The accommodation on the first floor comprises a kitchen, living room, a shower/toilet with sink, and staircase to the second floor from the first floor

landing. The accommodation on the second floor comprises a landing and two rooms. The second floor has been converted from the loft space.

9. It is the staircase to the second floor that is the subject of the Prohibition Order.
10. The staircases consists of 12 steps with a steep pitch and tight winder to the bottom section of the stairs. The stars have treads of approximately 200 mm (except for the winder) and risers of 230 mm. The stairs have the provision of two hand rails, one that runs the whole length of the left hand side of the stairs and a handrail to the right hand side that terminates just before the winder.
11. The living room on the first floor is currently being used as a bedsit type room, in that it is a combined sleeping and living space. The two rooms on the second floor are not currently used for sleeping, although there is some evidence of use as living accommodation, for example there is a desk that appears to be in use.

Application of the statutory scheme to this case

12. The statutory inspection of 6 September 2018 carried out by the Respondent resulted in a Prohibition Order dated 28 September 2018 being served upon the Applicant and the Tenants.
13. The Prohibition Order stated that the staircase to the second floor presented a Category 1 hazard in respect of Falling on Stairs.
14. The Prohibition Order prohibits:

“The staircase from the first floor to the second floor of Flat over 116 Hucknall Road, Nottingham, NG5 1AD is prohibited for use as access to the two rooms on the second floor until such time as the works specified in schedule 1 are completed. This also prohibits the use of the two rooms on the second floor being used as sleeping or living accommodation until the works are completed.”
15. The works specified in schedule 1 are:

“The first to the second floor staircase should be taken down and replaced with a staircase that meets the requirements of planning and building control regulations, which shall involve redesigning the first floor and second floor accommodation to allow for the new staircase to utilise extra space to incorporate suitable landings and pitch.

Planning and building control approval shall be [sought] where necessary for all works.”
16. The Prohibition Order contained details of the deficiencies giving rise to the Category 1 hazard;
 - a) The staircase is made up of high risers of between 240mm and 250mm in height with narrow treads of 200mm.
 - b) There is limited headroom when ascending and descending the stairs.
 - c) The staircase has a steep pitch.

- d) There is no handrail to the left side bottom winder of the staircase.
 - e) There is no handrail to the left side of the staircase.
 - f) The handrail to the right side is loose on both the top and the bottom brackets.
 - g) There is a door to the top of the staircase that cannot be fully closed.
 - h) There is no natural light gain to the staircase.
17. Served with the Prohibition Order was a “Statement of reason for decision to take enforcement action” (“the Reasons), as required by Section 8 of the Act.
18. Included in the Reasons are:
- (b) Making a prohibition order under section 20; is appropriate because it prevents the staircase being used to access the two rooms on the second floor which protects vulnerable persons.

The hearing

19. The tribunal convened on 26 November 2018 following the inspection. Those present at the hearing were those present at the inspection. Ms Conneally presented the case for the Applicant. Ms Green did so for the Respondent.

The Applicant’s case

20. On 8 October 2018, the Applicant submitted its application to the tribunal. The Applicant was not legally represented and did not state clearly in the application, or in its subsequent written submissions, its grounds for appeal. At the hearing Ms Conneally, who is a property manager for the Applicant, confirmed that the main ground of appeal is that the Property is in the same condition as when it was purchased, they had done no work to it since purchase, it would have passed building regulations when it was built, and that the stairs did not present a risk.
21. Ms Conneally submitted that deficiencies e-h had now been remedied, and the Applicant would promptly remedy item g.
22. The Applicant did not propose to remedy items a-d, because to do so would require the works set out in schedule 1 of the Prohibition Order . The Applicant submitted that to carry out the works would not be possible, or certainly not at any reasonable cost.
23. Ms Conneally submitted that the removal of deficiencies e-g meant that the staircase did not now present a significant hazard, and was safe for use as access to the second floor for sleeping and living accommodation.
24. Ms Conneally submitted that there were hundreds, if not thousands, of properties in Nottingham with the same type of staircase, and the Respondent should inspect them all if they were going to impose a Prohibition Order in this case.
25. Ms Conneally said that the Applicant would be agreeable to a varied Prohibition Order that prohibited the occupancy of the Property for children and the elderly.

26. Ms Conneally did not submit that any of the other methods of enforcement set out at section 5 of the Act were more appropriate than a Prohibition Order. Her case was that the stairs do not present the risk found to be present by the Respondent.

The Respondent's case

27. Ms May for the Respondent outlined the Respondent's case. The recent works remedied, or would remedy once the additional rail was installed, the deficiencies in respect of handrails and natural light, but did not remedy the high risers, narrow treads and steepness of the staircase. She submitted that there remained a hazard of sufficient severity that the Prohibition Order should be confirmed.
28. Ms May stated that, in her view, whilst the risk of injury was higher for the elderly and children, there was still such a significant risk of injury for able-bodied adults that the Prohibition Order should remain in place for all types of occupant. However, if the tribunal were not minded to confirm the Prohibition Order in those terms, the Respondent would not oppose a Prohibition Order which prohibited occupation by the elderly and by children, the vulnerable age group for this hazard.
29. Ms May confirmed that the intention of the Respondent was for the Prohibition Order to prohibit the use of the staircase for access to the second floor for sleeping and living accommodation, but to permit it for access to storage on the second floor, akin to loft style access and storage.
30. Ms May accepted the wording of the Prohibition Order was ambiguous in that access to the second floor for storage only was not intended to be prohibited by the Respondent.
31. The Respondent's Reasons set out, as required by section 8 of the Act, its reasons for imposing a Prohibition Order rather than one of the other methods of enforcement set out at section 5 of the Act. The Respondent set out in the Reasons why the other methods of enforcement were not appropriate, and why a Prohibition Order was the only appropriate method of enforcement.

The Tribunal's deliberations

32. It should be noted that the HHSRS allows the Respondent to consider design as part of the assessment, and compliance with previous building regulations at the date of construction does not preclude action being taken under the HHSRS.
33. The tribunal finds that there remains a category 1 hazard in relation to falls on stairs, even with the limited works that have been carried out, and even if a rail is fitted to the winder section of the staircase.
34. The steepness of the stairs, the limited tread width and height of risers is such that even an able bodied adult would be at significant risk of a fall. This would further be exacerbated if they had to carry a child or items that would limit their use to a single hand.

35. Section 5 of the Act requires there to be enforcement action when there is a category 1 hazard. The issue for the tribunal to determine, therefore, is whether a Prohibition Order is the appropriate method of enforcement.
36. The Applicant did not argue that any other method of enforcement was appropriate, other than that the remedial works that had already been carried out were sufficient to deal with the hazard.
37. The tribunal considered the representations of the parties and the site inspection and considered that a Prohibition Order was the most appropriate course of action, having regard to the circumstances of the case. The works required under an Improvement Notice would not be able to be reasonably carried out while the tenants were in occupation and, in any event, may not practically be able to be carried out at all or at a reasonable cost. A Hazard Awareness Notice would not prevent the use of the staircase to access the second floor for sleeping and living accommodation. The other options of enforcement, such as a Demolition Order or clearance, were not appropriate to the circumstances of this case.
38. In view of the fact that the tribunal has found that a category 1 hazard is present and the tribunal has found that no other enforcement option are appropriate, the only option left open to the tribunal is a Prohibition Order.
39. The tribunal can vary the terms of the Prohibition Order already imposed by the Respondent, if it considers it appropriate to do so
40. In this case the tribunal considered whether the use of the staircase should be absolutely prohibited, such that there was no access at all to the second floor, or whether the second floor could be used for storage, and the staircase used for access to that storage, akin to access to a loft.
41. The Respondent submitted that use of the staircase for access to loft style storage was appropriate, and did not argue for total prohibition of use of the staircase.
42. The Applicant argued for no limitation on the use of the staircase, save that they would agree that the flat should not be occupied by the elderly or by children. The Applicant submitted that if the staircase was not safe for use to access the second floor for living and sleeping, it was also not safe for access for storage, whilst maintaining its argument that the staircase was safe for general use.
43. The tribunal finds there is a difference between using a staircase for access for living and sleeping purposes, and for access to storage. Access to storage is not needed as frequently as access to sleeping and living accommodation. Access to sleeping and living accommodation takes place throughout the day, and where the toilet is on another floor as in this case, at night too. Use of the staircase to access accommodation is likely to sometimes occur when the user is sleepy, unwell, in a rush, etc. Access to storage is a more considered matter. Only allowing use of the staircase for storage reduces the risk of an accident substantially, such that it can reasonably be permitted for such use.
44. The tribunal also considered whether the most appropriate course of action was to prohibit occupation of the flat by children and the elderly. The tribunal accepts

that children and the elderly are at more risk of falls, including falls on stairs. However, the tribunal finds that the risk of an accident is unacceptably high for all age groups so that the Prohibition Order must apply to all.

45. When considering the terms of the Prohibition Order the tribunal considered the HHSRS guidance, particularly at paragraphs 5.21-5.23.
46. The Applicant asked the tribunal to consider the knock-on effect of a Prohibition Order on the “hundreds, perhaps thousands” of similar properties in the locality. The tribunal did not take the knock-on effect into account because the evidence before the tribunal did not show that there would be a significant knock-on effect. In any event, it is not clear that this is a matter that the tribunal was entitled to take into account but, due to the lack of evidence on the point, the tribunal does not need to consider that issue further.
47. The tribunal also considered the effect of the Prohibition Order on the current occupants Mr and Mrs Avison, who moved into the Property in July this year, some 2 months or so prior to the Prohibition Order and some 4 months before the hearing. They have an assured shorthold tenancy. They told the tribunal that if the Prohibition Order remained in place, they may have to find somewhere else to live. Whilst the tribunal has sympathy for Mr and Mrs Avison, the circumstances are such that the stairs represent an unacceptable risk to them and, taking that risk into account, the circumstances of their recent occupation of the Property, and the nature of their tenancy with limited security of tenure and lack of rent regulation, the Prohibition Order is a proportionate step.
48. The tribunal finds that the Prohibition Order of 28 September 2018 is confirmed, saved that the wording is varied to remove ambiguity.
49. The Prohibition Order is varied to read as follows:

“The staircase from the first floor to the second floor of Flat over 116 Hucknall Road, Nottingham, NG5 1AD is prohibited for use as access to the two rooms on the second floor until such time as the works specified in schedule 1 are completed, save that the rooms on the second floor may be used for storage only, and the staircase used for access to the second floor for that purpose only. For clarity, this prohibits the use of the two rooms on the second floor being used as sleeping or living accommodation until the works are completed.”

Either party may appeal this decision to the Upper Tribunal (Lands Chamber). Prior to making such an appeal, an application must be made, in writing, to this Tribunal for permission to appeal. Any such application must be made within 28 days of the issue of this decision.

S McClure
Judge of the First-tier Tribunal

15 January 2019