



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

Case reference : **LON/00AKK/HPO/2018/0012**

Property : **31 Kenwood Road, Edmonton,
London, N9 7JB**

Applicant : **Seeverajsingh Bissendary**

Representative : **Ms Sadhana Bissendary**

Respondent : **London Borough of Enfield**

Representative : **In House**

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

Tribunal members : **(1) Judge Amran Vance
(2) Ms S Coughlin, MCIEH**

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

Date of decision : **23 October 2018**

DECISION

Decision of the tribunal

1. The prohibition order made by the London Borough of Enfield on 23 July 2018 in respect of 31 Kenwood Road, Edmonton, London, N9 7JB is confirmed. The appeal by Mr Seeverajsingh Bissendary is therefore dismissed.

Introduction

2. Page numbers in bold and in square brackets below refer to pages in the hearing bundle provided by Enfield Council.
3. Mr Seeverajsingh Bissendary appealed against the making of a prohibition order by the London Borough of Enfield under section 20 of the Housing Act 2004, in respect of a property known as 31 Kenwood Road, Edmonton, London, N9 7JB.
4. The prohibition order was made on 23 July 2018 **[86]**. The appeal to the tribunal was received on 17 August 2018. Directions were issued on 28 August 2018 and the matter was heard on 23 October 2018. The tribunal inspected the property prior to the hearing.
5. At the hearing, the appellant was represented by Mr Ram Bissendary the applicant's uncle and Ms Sadhana Bissendary, his partner and the applicant's sister in law. The respondent was represented by Ms Patricia Henry, a private sector housing enforcement officer employed by the council. Ms Henry has provided a witness statement dated 16 October 2018 **[19]** in which she confirms that she has a BSC (Hons) Environmental Health degree and relevant training in the Housing Health and Safety Rating System.

Background

6. The property at 31 Kenwood Road, Edmonton, London, N97JB ("the Property") is a three-storey mid-terrace Victorian house which has been converted for use as a house in multiple occupation ("HMO") although it has not been licensed for use as an HMO. The freehold title is owned by the applicant and Mrs Susheela Devi, his wife Ms Sadhana Bissendary confirmed that the appellant was currently living in Mauritius, having separated from Mrs Susheela Devi, and that he had instructed her and Mr Ram to act as his representatives in this appeal.
7. Mr Ram Bissendary and Ms Sadhana Bissendary confirmed that the current accommodation arrangements at the Property are as follows:
 - (i) on the ground floor there is a self-contained studio unit with a separate shower unit within containing a shower, WC and wash hand basin. This unit is currently occupied by a couple and their child;
 - (ii) at rear ground floor level is a kitchen which leads to a shower room with WC and wash hand basin and a double bedroom (currently occupied by a couple and their dog);

- (iii) there are four rooms at first floor level: a rear double bedroom (currently occupied by a single man); another rear double bedroom containing a shower, WC and wash hand basin (currently occupied by a single man); a double bedroom (currently occupied by a single man); and a front box bedroom (also occupied by a young male). It is the box bedroom that is the subject of this appeal; and
 - (iv) on the second floor is a loft converted into a self-contained studio with separate kitchen and bathroom areas (occupied by a young male).
- 8. Ms Bissendary confirmed that all the rooms in the Property have been let on short-term assured shorthold tenancy agreements.
- 9. Following a complaint to the council about rubbish accumulating outside the Property, Ms Henry inspected it on 18 April 2018. In her witness statement she records that she found that there were several items of disrepair present, including a defective smoke detector on the ground floor, no smoke detector on the first floor, no fire blankets in the kitchen areas or heat detectors, none of the rooms had fire protection doors to the required standard nor smoke detection alarm systems installed, no carbon monoxide detector was present in the main kitchen and there was evidence of cockroach infestation in the kitchen.
- 10. On 23 July 2017, the respondent council decided to serve two prohibition orders and an improvement notice in respect of the Property. One prohibition order prohibited the use of ground floor rear bedroom as sleeping accommodation because the only means of escape in the event of a fire was through a high-risk room, the kitchen. This prohibition notice has not been appealed and nor has the improvement notice.
- 11. The second prohibition order prohibited the use of the first floor front box room as sleeping accommodation, although its operation was suspended until of the current tenancy for the room. Annexed to the order is a schedule, Schedule 1, that identifies a Category 1 hazard as being present in respect of the room, as assessed under the Housing Health and Safety Rating System (“HHSRS”), namely that the room was undersized, with its available living space being less than 6.5 m². It is stated in the schedule that this crowding and space hazard renders the room unsuitable for use as sleeping accommodation and that no reasonable or practical works could be carried out to reduce or remove the hazard.
- 12. The prohibition order was served on the applicant, and the occupier of the room.

The inspection

13. The tribunal inspected the property on the morning of the hearing.
14. The house is a small terraced house originally two storied in height. It has been extended at ground floor level at the rear and the loft has been converted into living accommodation. The house has uPVC windows and doors throughout. The inspection was limited to the first floor front left hand room (Room 6) and the common parts of the house. The room contained a bed, a wardrobe and a refrigerator with a microwave on top. Belongings were stored on the floor at the end of the bed, the only visible floor space in the room being a narrow space along the side of the bed. We were unable to see electric sockets but trailing leads were visible. A walkthrough galley style shared kitchen was located on the ground floor and beyond this a small shared shower room with shower, W.C. and wash basin. At the rear was an uncared for garden with a couple of derelict sheds at the end of the garden

The law

15. 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 HHSRS.
16. Where a hazard or several hazards in a property are rated as HHSRS category 1 hazards, the options for enforcement include, by section 5 of the Act, the power to serve an improvement notice under section 11 or the making of a prohibition order under section 20.
17. By section 8 of the Act, the authority must prepare a statement of the reasons for its decision to take the relevant action.
18. 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.
19. 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.
20. 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 in 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.

21. 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

22. The applicant's case is that properties with letting rooms of a similar size have been licensed as HMOs, including two properties in St Edmunds Road, Edmonton. In his application form he states that one of those properties has two out of the four bedrooms that are below the council's minimum size standard of 6.5 m². He also states that his understanding was that new rules regarding minimum room sizes did not come into effect until October 2018.

The tribunal's reasons for rejecting the appeal

23. Both parties agreed that the size of the room in question was 5.5 m², one m² smaller than required by the council's HMO standards. It is also smaller than the 6.51 m² minimum size for a sleeping room in a licensed HMO prescribed by the Licensing of Houses in Multiple Occupation (Mandatory Conditions of Licences (England) Regulations 2018 (“the 2018 Regulations”), which came into effect on 1 October 2018.
24. We agree with the council, as asserted in its statement of case, that a room of this size is unsuitable for a person to live in, especially once their furniture and belongings are installed. Our inspection made it clear that there is barely enough room for two persons to stand in the room and that circulation is impossible.

25. We also agree that there is a serious hazard present that had the potential to cause harm to the occupant. 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.”

26. In the present case, the tribunal considers there to be a serious threat to both the health and safety of the occupant. The tenant of the room has installed a fridge and a microwave in the room and we agree with the council that this constitutes a risk of electrical hazard and potential trip hazard due to the small living space and the use of electrical extension leads. We agree that the small size of the room will limit social interaction by the tenant with friends and other occupants of the property and that a room that is this cluttered is more likely to suffer the effects of condensation dampness than a larger room. In addition, there is no communal living space in the property which could otherwise provide an area for social interaction. The small size of the kitchen, which is shared by eight persons at present, and more when the council first inspected, does not facilitate social interaction.
27. The council accepts that prior to 1 October 2018 it sometimes licensed HMO's with rooms that were slightly smaller than the minimum room size of 6.5m² but that this was done on a case by case basis, with consideration given to the presence of other living and dining space in a property. In the case of this Property, no separate living or dining room is present and the kitchen is too small to accommodate a dining table and chairs.
28. The council agreed that it has licensed a HMO at 126 St Edmunds Road that has an undersized room measuring 6.1 m² but asserted that the property also has a living room measuring 19.7 m². The fact that this property was granted a license by the council is irrelevant to this appeal because the only question for this tribunal is whether the service of a prohibition order was appropriate and not whether the Property qualifies for a HMO license. The introduction of the minimum sleeping room standards 2018 Regulations in October 2018 supports the council's policy regarding a minimum room standard for sleeping accommodation. It also renders this appeal somewhat academic given that the applicant's apparent intention is to apply for a HMO license which can only be granted on the basis that the room in question is not used as sleeping accommodation.
29. The applicant did not present any challenge to the hazard ratings assessed by the council. We accept that the hazard exists and it follows

that the council was fully justified in the making of the suspended prohibition order.

30. If works are carried out to the Property which significantly affect the size or use of the room the applicant can then make an application to revoke or vary the prohibition order.
31. In all the circumstances, it is not considered that the decision to serve a prohibition order was disproportionate. The appeal is therefore dismissed.

Name: Amran Vance

Date: 1 November 2018

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).