

DECISION



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

Case Reference : **LON/OOAF/HPO/2014/0001**

Property : **14A Glebe Road, Bromley BR1 3NT**

Applicant : **ELH Associates**

Representative : **Mr Okosieme, Director of ELH Associates**

Respondent : **London Borough of Bromley**

Representative : **Mr C Millward, EHO**

Type of Application : **Appeal against a suspended prohibition order**

Tribunal Members : **Judge Evis Samupfonda
Mrs S Coughlin MCIEH**

Date and venue of Hearing : **10 Alfred Place, London WC1E 7LR**

Date of Decision : **19 June 2014**

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1. The Suspended Prohibition Order (SPO) made by the London Borough of Bromley (“the Council”) on 29 November 2013 under sections 20 & 23 of the Housing Act 2004 (“the Act”) in respect of the property known as Ground Floor Flat, 14a Glebe Road, Bromley, Kent, BR1 3NT (the property”) is confirmed.
2. The appeal by ELH Associates is accordingly dismissed.

Background

3. The appellant’s appeal against a SPO was heard on 13 June 2014. The Tribunal issued directions at the case management conference on 28 January 2014. It was indicated then that if the Tribunal wished to inspect the property this could be discussed and arranged with the parties at the hearing. Having heard the evidence, the parties agreed with the Tribunal that an inspection of the property was required.

The hearing

4. Mr Okosieme, Director of ELH attended and represented the appellant. His wife accompanied him. Mr Millward Environmental Health Officer represented the Respondent. Mr Clegg, Environmental Health Officer and his line manager and Ms Hennessy his assistant accompanied him. We had before us the Appellant’s bundle which contained the application and a detailed statement of case from Mr Okosieme together with supporting documents. We also had a detailed case officer report from Mr Millward, attaching his calculations of the hazard rating and supporting documentation.
5. We do not intend to go into detail over the evidence that was received at the hearing. Both parties had the opportunity to consider witness statements, the documentary evidence and hear the oral evidence. We thank both parties for their detailed documentary and oral evidence.

Inspection

6. The studio flat was inspected immediately after the hearing. Mr and Mrs Okosieme and Mr Millward attended. The flat is located on the ground floor of a double fronted end terrace 2 storey Victorian house. At some stage the house had been divided into 2 flats, one accessed by the front door of the house and the other accessed by the side door. This latter unit has been further subdivided to form four flats access via the side entrance door. The main entrance to the subject flat is from the ground floor communal hall which is shared with the three other flats. The doors from the entrance, shower room and rear yard opened into the room which combines

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kitchen area, living and sleeping space. The room was not of a regular shape. The kitchen facilities comprise stainless steel sink and base unit, single wall cabinet and fridge. The furniture comprised a single bed, television and a small moveable side table. During our visit this side table had been placed against the kitchen sink base unit obstructing access to one door of that unit. There was some high level storage at the top of the wall between the shower room and living space. There was insufficient room to provide any other cooking and clothes storage facilities. The flank wall has been plaster boarded covering access to a window which remains in the external brick skin. The pivoting window above the sink was difficult to reach to open and close. The floor was part tiled and part laminate. The shower room contained a shower, wash hand basin and WC.

The SPO

7. The Prohibition Order prohibits the occupation of the studio flat. It states that a Category 1 Hazard exists, the nature of which is Crowding and Space. The deficiencies giving rise to the hazard were described as “The minimum recommended floor area for a self contained studio flat with a combined living, bedroom and kitchen space, which is suitable for one person is 13m². The total floor area of the ground floor studio flat’s combined living, bedroom and kitchen space is no more than 7.5m².” It also stated that in order for the Prohibition Order to be revoked the following remedial action must be taken, “The studio flat will need to be enlarged to provide adequate space for its occupation by a single person. This may be achieved by enlarging the existing studio flat so that its combined living, bedroom and kitchen space is at least 13m².”

Grounds of Appeal

8. In summary, Mr Okosieme conceded that the flat was small but stated that it was 9.5m² in total including the shower room and about 7.5m² without the shower room. In essence he submitted that he did not believe that a hazard existed as described by the SPO. He did not believe that the space hazard was critical enough for him to lose his home. He stated that the flat is occupied by his nephew and is not and never has been rented out commercially. His nephew does not cook there and only uses the flat to sleep in. As a privately owned dwelling, Mr Okosieme did not believe that the council had the power to issue the Order or the right to stop him living in his own property as he sees fit however uncomfortable. He invited the Tribunal to quash the Order. If the Tribunal was not minded to do so, he submitted that the Order should be suspended for 18 months. This would allow time for his nephew to complete his studies and for the appellant to submit a full planning application to extend the flat in the manner described in the pre-planning application submitted on 15 January 2014. He considered that his nephew did

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not need cooking facilities as he did not eat at the flat and that the size of the room would be adequate if the cooking facilities were removed.

The Council's response

9. Mr Millward argued that given the hazard identified, the council had a duty to act and has the authority to do so under the Housing Act 2004. He explained in some detail the chronology of events as outlined in his case officer's report. He acknowledged that there is no statutory minimum floor area measurement for a self-contained studio flat with a combined kitchen, living and sleeping area and a separate private bath/shower room. He explained how the studio flat's area was calculated, that in his view it was 6.5m² but that he was prepared to concede, partly given its unusual shape, that it might be 7.5m² and no more. We were informed that the recommended floor area of 13m² was derived from the local housing authority adopted standards for houses in multiple occupation ("HMOs") which he said, are based on the 1994 Chartered Institute of Environmental Health Officers Amenity Standards for HMOs. The lack of space prompted the council to risk assess the following hazards using the Housing Act 2004's Housing Health and Safety Rating System ("HHSRS") Crowding and Space, Food Safety, Flames and Hot Surfaces etc and Position and Operability of Amenities etc. The assessments of the hazards; Food Safety, Flames and Hot Surfaces etc and Position and Operability of Amenities etc were scored as Category 2 hazards and the assessment of the hazard Crowding and Space was scored as a Category 1. The council decided not to pursue the Category 2 hazards as it was considered that they would be addressed by the works required to remove the Category 1 hazard. He confirmed that the risks and potential harms identified include both physical and psychological risks associated with inadequate kitchen, living and bedroom space. He outlined that the risks include accidents associated with cooked food, scolding, food contamination whilst being prepared and accidents associated in moving around in a cramped space. He concluded that the Order was appropriately served and only the remedial action specified would suffice.

The Law

10. The imposition of this SPO is governed by s20 of Housing Act 2004 as the council has taken the view that a Category 1 hazard exists. The Act is designed to empower Local Authorities to deal with all residential properties where the conditions are considered unsatisfactory by carrying out assessments based on the risk to the health and safety of occupiers. In accordance with the Act, a local authority will assess risk using the Housing, Health & Safety Rating System (HHSRS). All Category 1 hazards (the most serious) require the Local Authority to take mandatory enforcement action to either remove the hazard or reduce it to an acceptable level. Where

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category 2 hazards are identified the Local Authority has discretionary powers. The Local Authority must also have regard to the HHSRS Operating Guide to assess the 29 hazards which may be found in and around the home.

11. Appeals from the Local Authority's decision to impose a prohibition order rest with the Tribunal and fall under Schedule 2 Part 3 of the Act. On appeal the Tribunal may confirm, vary or quash a SPO. There is little general statutory guidance as to what criteria the Tribunal should abide by, although paragraph 11 provides that the appeal is by way of a rehearing and the Tribunal may have regard to matters of which the Local Authority were unaware. Regulations give details of the requirement for a Tribunal to give effect to the overriding objective of dealing fairly and justly with applications.
12. The operative time if this decision is appealed is found in paragraph 14 (3) to Schedule 2 Part 3 of the Act.

Findings

13. The parties were not in dispute insofar as the studio floor area was no more than 7.5m². Following our inspection, we find that the council has correctly identified a Category 1 hazard. The flat is small and cramped and lacked adequate space to provide adequate and safe cooking and living facilities. We consider that the risks associated with inadequate space are serious. Our decision is not solely based on the size of the room, but on its shape and the fact that several doors open into this space. We note that there are plans to submit an application for planning permission to extend the flat. However as at the date of this hearing the hazard exists.

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14. Under s23 of the Act, we have power to suspend the operation of the SPO so that it is suspended until the present occupier vacates, or until the end of his studies in 18 months time. We also have the power to quash, vary or confirm it without any suspension.
15. We are not persuaded by Mr Okosieme's submission that we should suspend the operation of the SPO. Given our findings, in our view the only proper way of bringing this property up to a standard where it is habitable and safe is to leave the SPO in place. The risk to occupants has been clearly demonstrated. The fact that Mr Okosieme and his nephew are willing to be exposed to the risk of harm and that Mr Okosieme does not intend to rent it out commercially does not mean that we should permit the occupation of hazardous units. The Prohibition becomes effective 3 months after the operative date (see paragraph 12) to allow time for the occupier to find alternative accommodation.
16. For these reasons we conclude that we confirm the Suspended

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Prohibition Order and the appeal dismissed.

Judge E Samupfonda