



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

Case reference : **LON/OOAG/HPO/2013/0027**

Property : **Flat 7, 177 Fordwych Road, London
NW2 3NG**

Applicant : **Banyan Property Ltd**

Representative : **Mr Panos Gyftopoulos**

Respondent : **London Borough of Camden**

Representative : **Mr Seamus McCarthy EHO
Ms Judith Harris EHO**

Type of application : **Appeal against a Suspended
Prohibition Order
Housing Act 2004 Sch2 2 Para 7(1)**

Tribunal member(s) : **Mrs V T Barran
Mrs E Flint FRICS
Mrs R Turner JP**

**Date and venue of
hearing** : **13 December 2013 at 10 Alfred
Place, London WC1E 7LR**

Date of decision : **16 January 2014**

DECISION

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1. The Suspended Prohibition Notice made by the London Borough of Camden on 12 August 2013 in respect of Attic Flat 7 177 Fordwych Road, London NW2 3NG is confirmed, save that it is varied to come into force not when Mr Ogu vacates, but 28 days from the date of this decision.
2. The appeal by Banyan Property Ltd is accordingly dismissed.

REASONS

Preliminary

3. The Tribunal is dealing with an appeal from Banyan Property Ltd (the appellant) under Schedule 2, part 3 of the Act, against a Suspended Prohibition Order (SPO) made by the London Borough of Camden under sections 20 and 23 of the Act.
4. The Tribunal issued directions on 16 October 2013. The hearing took place on 13 December 2013 and the Tribunal inspected the common parts of the house in which the property is situated prior to the hearing.
5. At the hearing the appellant was represented by Mr Gyftopoulos (Director). Mr Seamus McCarthy EHO (who also gave evidence) and Ms Judith Harris Principal EHO represented the Respondent. The Tribunal would like to thank the parties for their constructive approach to the hearing and for their well presented bundles of documents. The documents before the Tribunal included:
 - Suspended Prohibition Order (SPO) 12 August 2013
 - The appeal against the SPO
 - Appellant's statement of reasons
 - Tenancy agreement Banyan Ltd to Lilson 2 Housing Ltd for 2 years from 18 February 2013

- Response to the appeal and supplementary response (these included a witness statement from Mr McCarthy and a worked Example to Support HHSRS assessment).
6. In these reasons references to page numbers in Camden's bundles are given in square brackets [].

The issues

7. In directions the Tribunal Judge had identified the following issues
- a. Has the council gone through the necessary steps prior to issue of the prohibition order?
 - b. Does a hazard(s) (excess heat and/or collision and entrapment) exist and if so what category?
 - c. Is there a management order in force in relation to the premises, or not?
 - d. Should the council have taken enforcement action?
 - e. If so, what enforcement action is appropriate?
 - f. If a prohibition order is the correct action, do the contents of the order comply with the requirements of section 22 of the Act?
 - g. Should the tribunal confirm, quash or vary the prohibition order and/or should the operation of the prohibition order be suspended for any reason, in accordance with section 23 of the Act?
8. We looked at the steps taken by the council (Camden) prior to the issue of the prohibition notice and the requirements of section 22 of the Act (see below for summary). Mr Gyftopoulos raised no issue with regard to this in either his written reasons for appeal or at the hearing (issues a and f) and we accepted that Camden *had* complied with the statutory requirements.
9. It was agreed that there was no management order in force (issue c). We therefore considered the remaining issues b, d, e and g.

The new Occupier

10. The SPO prohibits the use of the property for occupation as living accommodation but was suspended until the occupier Mr Jermaine Ogu vacates.
11. When we arrived to inspect the flat before the hearing, Mr Gyftopoulos knocked on the door. It was opened by a man who identified himself as Mr Mohammed Meghebi. He was clearly surprised by our visit and did not wish us to inspect. Accordingly we withdrew. Mr Gyftopoulos subsequently informed us that Mr Meghebi had replaced Mr Ogu although he did not know when he had arrived or how long his sub tenancy was. He had been placed there by the tenant, Lilson Two Housing Ltd. We were told at the hearing that they act for Barnet Council and find homes for the people on their housing list.
12. In view of this new development we considered that the views of the present occupier had not been taken into consideration and further the present SPO, suspended until Mr Ogu vacated, clearly did not reflect the actual situation. Therefore we allowed both parties further time to research the position, obtain the views of the occupier and send in their written representations to us.

THE LAW: Part I of the Housing Act 2004

13. The Housing Act 2004 introduced a new assessment and enforcement framework to deal with unsatisfactory housing conditions whereby local authorities assess the condition of residential properties based on the risk to the health and safety of occupiers and have been provided with new powers to enforce housing standards. The system operates by reference to the identification of hazards and the subsequent serving of notices or orders on owners/landlords, requiring action to be taken to reduce risks or to restrict the use of property (see Sections 1-27 of the Act).

14. A local authority will assess risk using the Housing, Health & Safety Rating System (HHSRS). Category 1 hazards (the most serious) require mandatory enforcement action by the local authority. Where category 2 hazards are identified the local authority has discretionary powers.
15. When a local housing authority finds category 1 hazards, section 5 of the Act sets out the various courses of enforcement action (including the SPO used here). They must take the appropriate course and give reasons with the order or notice. They must also have regard to National Guidance.
16. Section 20 of the Act sets out the law in relation to prohibition orders as a possible course of *mandatory* action where a category 1 hazard has been established. Section 21 sets out the law with regard to the *power* of a local authority to make prohibition order where there are category 2 hazards. Of particular interest here is section 22 of the Act, which sets out the criteria for issue of a prohibition order, and section 23 of Act, which sets out criteria whereby a housing authority may suspend a prohibition order.
17. On appeal the Tribunal may confirm, vary or quash an SPO. (See Schedule 2 Part 3 of the Act). There is little general statutory guidance as to what criteria the RPT should abide by, although the appeal is by way of a rehearing and the tribunal may have regard to matters of which the LHA were unaware. Regulations give detail of the requirement for a Tribunal to give effect to the overriding objective of dealing fairly and justly with applications.
18. The operative time if this decision is appealed is found in paragraph 14 (3) to Schedule 2 Part 3 of the Act.

Facts found (including from Inspection)

19. Camden received a complaint in December 2009 with regards to a leak. This led a previous environmental health officer (EHO) Rachel Fell to inspect the house including the property, flat 7, in March 2010. She

communicated with Mr Gyftopoulos via e-mail at the end of March 2010 and sent him a list of remedial works. Since then Camden and Mr Gyftopoulos have worked together to avoid service of an improvement notice on other parts of the house. However flat 7 presented different problems and it is that flat that is the subject of this appeal.

20. Details of the steps taken by Camden are to be found in the witness statement of Mr McCarthy [23-37]. This evidence was not disputed by Mr Gyftopoulos and there had clearly been cooperation between the parties.

21. Following inspection on 30 November 2010, Mr McCarthy identified deficiencies in the flat in the property and scored the hazards under the Housing Health and Safety Rating System [117 – 120] coming to the conclusion that there are two Category 1 hazards:

Excess Heat (3)

- The living and sleeping areas of the converted studio flat is situated immediately below the roof which is uninsulated. There is inadequate ventilation provision with one “Velux” window in the roof and two opening lights above the fixed panes of the kitchen windows to the rear.

Collision and Entrapment (26)

- The layout of the attic studio room is such that most of the habitable areas are below the many angled sloping roof and there is a change in ceiling height between the lounge area and the bed area so at its maximum the ceiling is 1.56m. The sloping ceiling in the shower/WC is also low making the use of the facilities difficult.

22. The premises are in the converted loft of a late 19th century two storey semi detached house situated in a residential area of similar houses. The house has bay windows to the ground and first floors, there is an enclosed porch and the windows are double glazed. The pitched roof over the bay windows has 5 sections; the ridge over the bay window is at a lower level than the

roof over the main part of the building. The front elevation of the property is well maintained. Access to the flat is via a narrow staircase. The original hall and landings have been altered to maximise the space in the individual flats.

23. The tribunal was unable to inspect Flat 7 internally. The findings of fact in relation to the accommodation within flat 7 are based on the inspection of the front elevation, the internal common parts and the description, photographs, floor plans and other drawings in the bundle. The maximum ceiling height in the bedroom area, measured to the apex is 1.56m which is below the normal acceptable ceiling height of 2.1m and also only a little above 1.5m, which is the minimum height of useable space.

24. The photographs of the velux window show the depth of the reveal. Based on the evidence of the photographs and Mr McCarthy's unopposed evidence that the ceiling plaster appeared to be the original, the tribunal is of the opinion that, on the balance of probabilities, it is unlikely that there is adequate insulation under the slope of the roof to provide sufficient protection from the heat of the sun since there is only limited ventilation within the flat. The only opening windows are two top opening fanlights in the kitchen area and the velux window in the bedroom area.

The grounds for the appeal

25. Mr Gyftopoulos submitted firstly that tenants had been living at Flat 7 since 2003 and there had been no injuries from the restricted height of 1.56 m in that time. Secondly the current occupier of Flat 7 is Lilson Two Housing Ltd and Mr McCarthy was aware of this because they let flats for Camden Benefit tenants to live in. He did not think Camden should prohibit use of this flat because the demand for housing in the borough is high, the area is a good one and the property is nice. Camden has been receiving council tax for Flat 7 for some ten years.

26. In his written statement Mr Gyftopoulos argued that the suspension should not end when Mr Ogu vacated. Now and given the new occupier he reiterated that the prohibition order should be suspended until Lilson Two Housing Ltd vacate the premises. He made no further representations (as invited by us) following the hearing on the change of occupier to Mr Megherbi.

Camden's response

27. Camden argued that given the existence of two Category 1 hazards it had a duty to take enforcement action. Although the flat had been occupied for 10 years without apparent injury Mr McCarthy assessed the likelihood of the incidence occurring over the next 12 months as high. This is because there is a marked change in head height between the rear and front of the main room so that anyone with an average height has to bend down to get into the bed area. In addition in his view, because the property had been converted without apparent reference to Building Control, it was unlikely that sufficient insulation was in place in the roof.

28. The bed is located below the lowest part of the ceiling, and although there is a skylight above and windows at the rear there would be insufficient cross ventilation to prevent high temperatures especially at night in summer months. He pointed to the consequences of high temperatures such as an increase in cardiovascular strain, increased mortality where temperatures exceed 25 degrees centigrade, increased strokes, dehydration for the elderly and very young and interference with sleep pattern.

29. He considered that suspending the prohibition order until Lilson Two Housing Ltd vacates the property, would allow them to keep renting out the flat and expose any number of potential occupants to the Category 1 hazards. Additionally they could extend the tenancy beyond two years.

30. Mr McCarthy had not been aware Lilson Two Housing Ltd sublet the flat for Barnet Council. He agreed demand for accommodation in the locality

is high but reiterated that Camden has a duty to take appropriate enforcement action. There is no current link between entitlement to housing benefit and standard of accommodation occupied.

31. Mr McCarthy subsequently told us that he had tried to ascertain Mr Megherbi's views about the SPO but he had not been in for the appointment sent. He had contacted Barnet Council who had told him that the flat is used for emergency accommodation and the tenants are there on license for short periods (from a night to a month). There would be no entitlements to home loss payment as they would have to occupy the flat as their only or main residence for a year.
32. He contended for the prohibition order to be varied so that it comes into force 28 days after it has been made, thus giving Barnet time to find the occupant alternative occupation.

The Tribunal's decision

33. As explained at the hearing, under paragraph 11 to Schedule 2 of the Act the appeal is to be by way of a re-hearing, but may be determined having regard to matters of which the authority (Camden) were unaware. In this case, the change of occupier was such a matter.
34. In the light of the facts found above, we find that Camden have correctly identified two Category 1 hazards in the flat. In our view the hazard of collision, resulting from the angled sloping roof and low ceiling height, is the most serious one. It appears from the evidence that it will be very difficult and expensive to remedy these defects and that planning permission has already been refused for one scheme submitted by Mr Gyftopoulos. We also accept on balance that the hazard of excess heat has been correctly identified and that there is inadequate insulation and problems with ventilation.

35. It follows that Camden have a duty to take enforcement action (section 5 of the Act). We then turn to consider whether the action taken by Camden was the appropriate one. We accept that to issue a hazard awareness notice would have no legal effect and would not lead to increased health or safety of any occupier. It was agreed that emergency remedial action, an emergency prohibition order, demolition or clearance orders would not be appropriate here.
36. The remaining possible course of enforcement action would be service of an improvement notice. The advice given to Mr Gyftopoulos by his own architect and by his own contractor was that, in order to carry out the necessary changes to the ceiling height, a considerable amount of money would need to be spent, and probably tenants below would need to be moved out. As mentioned above, there is also the difficulty in obtaining planning permission, as demonstrated by one refusal in June 2012 re a proposed dormer roof extension.
37. We therefore conclude that an improvement notice would not be an effective tool, because the accompanying schedule of works sufficient to lead to a reduction in the hazards/ risk of harm to occupiers, would not easily be achievable.
38. Finally should we confirm, quash or vary the prohibition order and/or should the operation of the prohibition order be suspended for any reason, in accordance with section 23 of the Act?
39. We have various options here. We have power to quash the prohibition order, we can confirm the prohibition order without *any* suspension, we can vary the prohibition order so that it is suspended until the present occupier Mr Meghebi vacates, or until the end of two year tenancy agreement with Lilson Two Housing Ltd (17 February 2015) or for 28 days.
40. Our findings above lead us to conclude that we should confirm the order, but given Mr Ogu has vacated we must vary the suspension. We are not

persuaded by the argument put by Mr Gyftopoulos that we should suspend it until the end of two year tenancy agreement with Lilson Two Housing Ltd (17 February 2015). We consider the risk to occupants to be demonstrated and arguably the risk of harm will increase for short time vulnerable occupiers. We are aware of the shortage of residential accommodation in London but do not consider that this justifies occupation of hazardous units. We also are aware that the tenancy may be extended. By suspending the order for 28 days the current occupier (whoever that may be) will be able to be rehoused by Barnet.

41. We direct that Camden send a copy of this decision to Barnet immediately so that they can cease future arrangements to grant any new licence for the flat and can rehouse any occupant within 28 days of the date of this decision.

Tribunal Judge:
16 January 2014

Mrs V.T.Barran

