



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

Case Reference : **LON/00AU/HPO/2019/0002**

Property : **236 Hornsey Road, London N7 7LL**

Applicant : **Maria Hinallas**

Representative : **In person**

Respondent : **London Borough of Islington**

Representative : **Quentin Paterson, Solicitor (in-house)**

Also present : **Panagiotis Hinallas (Applicant's husband and joint owner of the Property) and Anne Coates (Senior Environmental Health Officer)**

Type of Application : **Appeal under the Housing Act 2004 against a Prohibition Order**

Tribunal Members : **Judge P Korn
Mrs E Flint FRICS IRRV**

Date and venue of Hearing : **6th June 2019 at 10 Alfred Place,
London WC1E 7LR**

Date of Decision : **7th June 2019**

DECISION

Decision of the Tribunal

The decision of the Respondent local housing authority is hereby confirmed, and consequently the suspended prohibition order itself is confirmed.

Introduction

1. The Applicant is appealing pursuant to paragraph 7(1) of Schedule 2 to the Housing Act 2004 (“**the 2004 Act**”) against a decision of the Respondent to serve a suspended prohibition order on her in respect of the Property.
2. The prohibition order is dated 25th January 2019 and prohibits the use of the first floor rear bedsit within the Property as sleeping accommodation. The operation of the prohibition order is expressed to be suspended and to become operative automatically when the current tenant ‘Ibrahim’ vacates.
3. Separate orders have been served on each of Maria Hinallas and Panagiotis Hinallas as they are joint owners of the Property.
4. The suspended prohibition order specifies lighting as being the relevant hazard and lists the deficiencies giving rise to that hazard as being the following:-

Obstruction – of windows by buildings or other features

There is a commercial ventilation extraction flue immediately outside the window obstructing some natural light from entering the window.

Size, shape and position – inadequate size, inappropriate shape and/or position of windows preventing reasonable penetration of daylight into room

The window is positioned to the top of the bedsit’s internal wall which partly backs onto the rear-addition kitchen, the lower sill is above 1.85 m in height so well beyond the normal range for most people to see out of. It is above the ceiling of the kitchen, hence the unusual height.

Outlook – lack of reasonable view through living room windows

There is no separate living room to the property and therefore the tenant will spend most of their time in the bedsit, so the view of the window is of significance. There is a lack of a ‘reasonable’ view being that it is mostly of the sky and the commercial extraction flue and only accessible if the tenant looks up.

5. Prior to the hearing the Tribunal inspected the Property in the presence of the parties.

Applicant's case

6. In her application the Applicant states that the fan outside the window is against the side wall separating the Property from the neighbouring premises, and in her view it is not blocking out any natural light. She also states that there is enough space in the kitchen for four people to sit.
7. The Applicant has not provided any further written statement of case. At the hearing, she said that if the occupier of the first floor rear bedsit wanted a view he could look through the window in the kitchen or through the one in the hallway.

Respondent's case

8. In her witness statement, Anne Coates, a senior environmental health officer, summarises the background to the service of the suspended prohibition order and summarises the grounds for making the suspended prohibition order. She also describes her conversations with Mr and Mrs Hinallas and her inspections of the Property. Relevant copy correspondence is attached to her witness statement, including in relation to the service of the prohibition order.
9. Also attached to Ms Coates' witness statement is a printed summary of her findings on inspection and her detailed workings leading to the scoring of the likelihood of different possible outcomes.
10. At the hearing Mr Paterson provided an extract from the Housing Health and Safety Rating System Guidance which describes the lighting hazard in more detail, including potential for harm, average likelihood of harm, causes of harm, possible preventive measures, relevant matters affecting likelihood and harm outcome, and hazard assessment. He also referred to the various procedural steps taken by the Respondent and the contents of the suspended prohibition order itself.
11. Mr Paterson said that the window was very small and very high up. The location of the external fan was an additional factor as it blocked out some light, but it was not the main issue. The psychological harm associated with the lack of light in the room was exacerbated by the fact that there was no communal lounge and that the kitchen – which served four occupiers – was too small to sit in. Therefore, it was likely that the occupier would spend a large amount of time in the room itself. The decision to suspend the prohibition order was taken so as not to prejudice the existing tenant.

Cross-examination of Ms Coates

12. Ms Coates took the Tribunal through her methodology by reference to the documents in the hearing bundle.
13. As regards whether an improvement notice should have been served instead, Ms Coates said that she had considered whether another window could be installed but had then discounted this option as impractical. As regards the decision to suspend the order, she said that she had used her judgment as to the likelihood of immediate harm.
14. In relation to the overall assessment of the hazard, she said that she would have felt differently about the nature of the hazard if there had been a living room in which occupiers could have relaxed.
15. The Applicant was given an opportunity to cross-examine Ms Coates.

Relevant statutory provisions

16. Housing Act 2004

Section 7

- (1) *The provisions mentioned in subsection (2) confer power on a local housing authority to take particular types of enforcement action in cases where they consider that a category 2 hazard exists on residential premises.*
- (2) *The provisions are (a) section 12 (power to serve an improvement notice), (b) section 21 (power to make a prohibition order), (c) section 29 (power to serve a hazard awareness notice) ...”.*

Section 20

- (3) *The order may prohibit use of the following premises – (a) if the residential premises on which the hazard exists are a dwelling or HMO which is not a flat, it may prohibit use of the dwelling or HMO; (b) if those premises are one or more flats, it may prohibit use of the building containing the flat or flats (or any part of the building) or any external common parts; (c) if those premises are the common parts of a building containing one or more flats, it may prohibit use of the building (or any part of the building) or any external common parts.*
- (4) *The notice may not, by virtue of subsection (3)(b) or (c), prohibit use of any part of the building or its external common*

parts that is not included in any residential premises on which the hazard exists, unless the authority are satisfied – (a) that the deficiency from which the hazard arises is situated there, and (b) that it is necessary for such use to be prohibited in order to protect the health or safety of any actual or potential occupiers of one or more of the flats.

Section 21

- (1) If – (a) the local housing authority are satisfied that a category 2 hazard exists on any residential premises, and (b) no management order is in force in relation to the premises under Chapter 1 or 2 of Part 4, the authority may make a prohibition order under this section in respect of the hazard.*
- (2) A prohibition order under this section is an order imposing such prohibition or prohibitions on the use of any premises as is or are specified in the order in accordance with subsections (3) and (4) of section 22.*
- (3) Subsections (3) and (4) of section 20 apply to a prohibition order under this section as they apply to one under that section.*

Section 22

- (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 ... 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.*
- (3) The order may impose such prohibition or prohibitions on the use of any premises as – (a) comply with section 20(3) and (4), and (b) the local housing authority consider appropriate in view of the hazard or hazards in respect of which the order is made.*
- (4) Any such prohibition may prohibit use of any specified premises, or any part of those premises, either – (a) for all purposes, or (b) for any particular purpose, except (in either*

case) to the extent to which any use of the premises or part is approved by the authority.

Section 23

- (1) *A prohibition order may provide for the operation of the order to be suspended until a time, or the occurrence of an event, specified in the order.*
- (2) *The time so specified may, in particular, be the time when a person of a particular description begins, or ceases, to occupy any premises.*

Schedule 2

- 7(1) *A relevant person may appeal to the appropriate tribunal against a prohibition order.*
- (2) *Paragraph 8 sets out a specific ground on which an appeal may be made under this paragraph, but it does not affect the generality of sub-paragraph (1).*
- 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 ... (b) serving a hazard awareness notice ... (c) making a demolition order ...”.*
- 11(1) *This paragraph applies to an appeal to the appropriate tribunal under paragraph 7.*
- (2) *The appeal – (a) is to be by way of a re-hearing, but (b) may be determined having regard to matters of which the authority were unaware.*
- (3) *The tribunal may by order confirm, quash or vary the prohibition order.*
- (4) *Paragraph 12 makes special provision in connection with the ground of appeal set out in paragraph 8.*
- 12(1) *This paragraph applies where the grounds of appeal consist of or include that set out in paragraph 8.*

- (2) *When deciding whether one of the courses of action mentioned in paragraph 8(2) is the best course of action in relation to a particular hazard, the tribunal must have regard to any guidance given to the local housing authority under section 9.*

Tribunal's analysis

17. As discussed at the hearing, the Statement of Reasons forming part of the Order states that the making of a Prohibition Order is the most appropriate course of action and that the making of a Suspended Prohibition Order is not an appropriate course of action. However, the Order then goes on to state the decision itself to be to make a Suspended Prohibition Order. Ms Coates explained at the hearing that this was the result of a simple typographical error or oversight and that the intention had been to state that the making of a Suspended Prohibition Order was the most appropriate course of action. Having heard Ms Coates on this point we are satisfied, based on all the circumstances, that this is indeed what was intended and that the Applicant would not have been confused by this error or oversight.
18. The Respondent has in our view provided persuasive evidence of the existence of a category 2 lighting hazard on the Property and persuasive evidence that the nature of the hazard justifies the imposition of a suspended prohibition order. Ms Coates is a qualified senior environmental health officer who has inspected the Property, has assessed the nature of the hazard and has calculated the severity of the hazard and the likelihood of harm arising from it. She has considered the HHSRS Operating Guidance, including worked examples. She came across well at the hearing, and we consider that she has used her judgment in order to approach the issues in a sensible and proportionate manner.
19. Whilst on inspection we found the room to benefit from a reasonable amount of natural light, it is clear – judging by the size and height of the only window – that this is because we inspected the Property on a particularly sunny day and at a time when the sun was positioned at a favourable angle. On a grey December day the room would look very different.
20. The Applicant has made an assertion regarding the location of the fan / ventilation extraction flue, but having inspected the Property we do not agree with her assessment and in any event the location of the fan is not the main issue. We also disagree with her that the kitchen is large enough for four people to use and we disagree that the existence of windows in the kitchen and hallway is at all relevant. In the absence of a shared lounge or a larger kitchen, any occupier of this bedsit will in practice have to spend a large amount of time in the bedsit. It is objectively the case that the window is small and high up, and we noted

on the inspection that when for example sitting on the sofa one could only see a small patch of sky.

21. Aside from the assertions referred to above, the validity of which we do not accept, the Applicant has not offered any challenge to the Respondent's evidence.
22. As to whether a different type of enforcement action would be more appropriate, we do not consider that it would be. An improvement notice would be impractical, because there is no proportionate way to improve the bedsit in order to remedy the hazard. A hazard awareness notice would not by itself remedy the hazard and we agree with the Respondent that the bedsit is not suitable for use as sleeping accommodation. The Respondent's decision to suspend the prohibition order is in our view a sensible and proportionate decision, as it puts some weight on the needs of the current occupier and involves a judgment that the risks associated with the hazard are not severe enough to justify making the current occupier homeless.
23. There is no evidence or suggestion that there is any management order in force in relation to the Property, and we are satisfied that the Respondent has complied with the relevant provisions of section 22 of the 2004 Act. In deciding whether an alternative course of action would have been the best course of action in relation to the lighting hazard, we have had regard to the relevant guidance for local housing authorities.
24. In conclusion, therefore, we consider that the service of a suspended prohibition order was, and remains, (a) a course of action available to the Respondent and (b) the most appropriate course of action in the circumstances to deal with the lighting hazard.

Cost applications

25. There were no cost applications.

Name: Judge P Korn

Date: 7th June 2019

RIGHTS OF APPEAL

- A. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) a written application for permission must be made to the First-tier Tribunal at the regional office dealing with the case.

- B. 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.
- C. If the application is not made within the 28 day time limit, such application must include a request for extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
- D. 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.