



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

Case reference : **LON/00BE/HPO/2023/0005**

Property : **Flat 1, 88 Walworth Rd, London, SE1
6SW**

Applicants : **Guru Nanaks Properties Limited**

Representative : **Gurmehar Kleir**

Respondent : **London Borough of Southwark**

Representative : **Wayne Beglan**

Type of application : **Appeal against an emergency
prohibition order**

Tribunal members : **Judge Shepherd
Apollo Fonka FCIEH**

Date of decision : **22nd November 2023**

1. Guru Nunaks (“The Applicant”) is challenging the decision of the London Borough of Southwark (“The Respondent”) to serve an Emergency Prohibition Order (“EPO”) on them. The EPO was served on 17th April 2023. It was served because of the presence of Category 1 Hazards in the premises at Flat 1, 88 Walworth Rd, London SE16SW (“The premises”). The Applicant owns the premises which was let to a tenant, Mr Jailson Da Silva Rocha (“The tenant”). The building in which the premises is located is a four storey building which has been converted into fourteen self-contained studio flats. These flats are

used by various Local Authorities as "Temporary Accommodation" for their most vulnerable previously homeless clients.

2. On the 4 February 2022, the Respondent received a complaint from the tenant about his living conditions and requested that an inspection be carried out at the premises. Following the complaint, the Respondent confirmed with the tenant that a Housing Health and Safety Rating System "HHSRS" inspection would take place on the 10 February 2022. Prior to the inspection, the Respondent were able to confirm through Companies House and Land Registry searches that Guru Nanaks Properties Limited i.e. "the Applicant" is the freeholder of the property. DMS Properties Services Limited "DMS" is the agent for the freeholder. There had been previous complaints about the premises which related to water ingress and sewage problems.
3. On 10 February 2022, the HHSRS inspection took place. Amongst other things, the following issues were found:
 - mouse infestation
 - a small damp patch on the left hand side wall which showed red on
 - the damp meter was loose,
 - laminate floor covering had no insulation underneath it and
 - there was black mould on the concrete floor beneath.
 - water ingress staining to ceiling and adjacent to a pendant lighting fitting
 - the smell of raw sewage in the bathroom
 - electrical hazards consisting of faulty sockets in the hall and kitchen
 - A visible hole in the top of the power shower unit, which the tenant claimed would trip when showering.
 - Hazards were also identified in the communal areas.
4. On 11 February 2022, the Respondent emailed DMS with a list of the findings. As there was no response from DMS regarding the email, an HHSRS Excel scorecard calculation was carried out for each hazard witnessed. In summary serious hazards were found in relation to fire safety, electrical and damp and mould growth.
5. On 17 February 2022, the Respondent served an improvement notice in respect of the category 1 and 2 hazards identified, for which the Applicant had to carry out remedial works. In addition, the Respondent served a section 4 notice under the Prevention of Damage by Pests Act 1949, which required the applicant to take steps to instruct a contractor to identify the cause and extent of the rodent infestation and then take steps eradicate said infestation.

6. Due to access issues, on 11 May 2022, the Improvement Notice and the Prevention of Damage by Pests Act 1949 section 4 notice were varied until 17 July 2022, so as to alter the time for works to be carried out.
7. On 27 May 2022, the Applicant contacted the Respondent regarding the notices served. He asked for guidance in relation to some of the issues raised in respect of the premises.
8. On 13 July 2022, DMS contacted the Respondent to inform that there had been a fire at the premises. In that email, DMS stated that the tenant was asked to allow the caretaker into the premises so that they could get a better understanding of the issues. They went on to say that if the tenant refused the caretaker access, they would inform the police. They also noted in that email that the tenant had previously been offered alternative accommodation, but he refused to take it. The fire was caused by an electrical wall socket associated with the cooker, located in the kitchen.
9. On the 14 July 2022, a further HHSRS scorecard calculation for fire hazards was carried out. The HHSRS gave a score of 5630 placing it in Band A, category 1 fire safety hazard. Due to the heightened risk identified in the calculation a decision was taken to serve an EPO on the Respondent, tenant and agent. The EPO stated that the council were satisfied that the hazard involved an imminent risk of serious harm to the health and safety to the occupiers of the residential premises and prohibited the use of the premises, with immediate effect. The EPO specified the following works to be undertaken:
 - Disconnect the electrical supply to the property
 - Thoroughly overhaul the electrical supply system, replacing or repairing as necessary any defective wiring, power points, light fitting switch or other fittings. Test and leave in a safe and satisfactory working order and that,
 - All new work must comply with the current edition of the IEE wiring Regulations
 - All works on electrics must be carried out by a competent person such as a contractor approved by NICEIC, ECA or equivalent organisation relating to the new works.
10. On 14 October 2022, the tenant emailed DMS and the Respondent attaching pictures of a leak within the premises coming from Flat 8, which is the flat above Flat 1. On 17 October 2022, the agent emailed the tenant and Respondent stating that no further work would be carried out as he is no longer its tenant. In the email, the agent tells the tenant to move out “asap” as they wish to hand back the property to the landlord. They also note in this email that the tenant has refused several alternative properties for re-housing.

11. During the operational period of the EPO, on the 23 October 2022, Flat 4 in 88 Walworth Road became available and was advertised on Spare Room as available for rent at £1275 per month. The Applicant chose not to move the tenant into this vacant property. On 10 November 2022, DMS contacted the Respondent to say that it no longer wished to correspond with the tenant as he is a trespasser.
12. On 14 November 2022 the Respondent contacted the agent regarding its ability to re-house the tenant. The Respondent reminded the agent that it was their responsibility to ensure compliance with the EPO and if necessary seek a possession order.
13. On 5 January 2023, the Respondent applied for a summons to Croydon Magistrates court for failing to comply with the EPO dated 14 July 2022. The summons was served on Guru Nanaks Properties Ltd, Balbir Kaur Klier, Resham Singh Kleir, Bhupinder Singh Purewal, Tajinder Kaur Purewal, DMS Properties Services Ltd & Dilbhag Singh. The first appearance was scheduled for 13 March 2023 at 10am at Croydon Magistrates Court.
14. On the 22 February 2023, an inspection of the premises was carried out. It was noted that some of the kickboards under the kitchen units were missing. Under the kitchen units, officers saw pooling water and noted that the units were adjacent to the shower room.
15. On 27 February 2023, Bhupinder Singh Purewal and Tajinder Kaur Purewal resigned as directors at Guru Nanaks Properties Limited. Active Persons with Significant Control were listed as Mr. Gurmehar Singh Kleir, Mr. Resham Singh Kleir and Mrs. Balbir Kaur Kleir.
16. On 18 March 2023, the Applicant contacted the Respondent to inform that all works had been carried out and requested that the premises be inspected. On that date, the Applicant also provided the Respondent with a copy of the electrical safety certificate. An appointment was made for the HHSRS inspection to take place on 12 April 2023 at 11am. During the inspection, the Respondent's enforcement officers wearing FFP3 masks, could still smell the damp, sewage and mice odour emanating from the premises and stated that the smell was "overpowering". Relative to the previous inspection, water ingress staining the ceiling adjacent to the pendant light switch was significantly worse. The wall adjacent to the tenant's bed was still damp to touch and when measured, the damp meter light turned red. The bathroom

had a strong smell of sewage. Officers viewed under the shower unit and saw stagnant waste water had pooled there. There was extensive evidence of rising damp to the wall. The tenant informed the officers that on 5 January 2023, a blockage occurred in the foul drainage pipe, which is used by 11 flats. This caused raw sewage to surge out of the foul waste pipe located in the shower room, covering everything in its path. Although the blockage was cleared by contractors, they left raw sewage all over the walls and floor.

17. On 17 April 2023, an HHSRS Excel scorecard calculation was carried out for damp and mould growth hazards, due to the significant deterioration of the premises that had occurred in the previous 14 months. The score was 2445 which is Band B category 1 hazard for damp & mould growth. At this point, the remedial works to rectify the category 1 fire hazard had been carried out to a satisfactory standard by the Applicant and so, the EPO dated 14 July 2022 was revoked. The Respondent served a section 4 notice under the Prevention of Damage by Pests Act 1949, which required the Applicant to take steps to instruct a contractor to identify the cause and extent of the rodent infestation and then take steps eradicate said infestation. The Respondent served a new EPO for category 1 damp and mould growth hazard. This EPO required the following redial works to be carried out:

- Identify the various sources of damp in the flat
 - Carry out all the necessary remedial action to eliminate the category1 damp and mould growth hazard
 - Ensure all leaks, water ingress, rising and penetrating damp are rectified
 - All floors walls and ceilings are to be repaired and renewed where necessary and left in a smooth readily cleansable, satisfactory and safe condition.

18. On 18 April 2023, the Applicant contacted the Respondent regarding the EPO to express disappointment at the service of the notice. The Applicant stated in that email that his contractor discovered the leak the week before and he had made several attempts on numerous occasions to carry out repairs. The tenant told the Applicant that he was not available for repairs to be carried out and that the Applicant was waiting for the tenant to give him a convenient date for repair work to be carried out. The Applicant went on to say the tenant only notified him of the leak recently and he can only act when notified. The Applicant accepted that the leak must have been continuing for a number of weeks. The Applicant stated that he thought the Respondent acted prematurely in issuing the EPO.

19. On 9 May 2023, the Applicant lodged an appeal to the First Tier Tribunal Property Chamber against the imposition of the EPO on 17 April 2023.
20. On 12 May 2023, the Respondent received an email from the tenant stating there was a severe leak pouring into the studio flat ceiling and shower room which caused the ceiling to bulge. As a result, the Respondent alerted the Applicant to this by email.
21. The grounds of appeal are stated as being:
- The EPO is too harsh or inappropriate, as the Applicant was only notified of the dampness in the premises at the end of March 2023 and the applicant acted promptly by appointing a contractor to carry out repairs by the 1st week of April.
 - The contractor was able to identify the source of the leak which was a broken shower waste pipe situated below a suspended timber floor.
 - The Applicant had liaised with the tenant and was confident that the pipe can be replaced which would prevent waste water from entering the premises.
 - The Applicant also said that the tenant prevented him from carrying out remedial work.

The Law

22. Section 5, Housing Act 2004 imposes a general duty on the Respondent to take enforcement action where category 1 hazards are identified. Section 7 Housing Act 2004 imposes a general duty on the Respondent to take enforcement action where category 2 hazards are identified.
23. Section 20 Housing Act 2004 provides the power to the Respondent to make an order where category 1 hazards are identified. Section 21 Housing Act 2004 provides the power to the Respondent to make an order where category 2 hazards are identified.

The inspection and hearing

24. The Tribunal inspected the premises on 12th October 2023. The consist a bedsit flat with bathroom/WC. The premises were in a generally poor condition with evidence of water ingress to the area underneath the shower tray. The wall immediately to the rear of the cooker and immediately behind the tenant's bed were damp. There were stains to the bedsit ceiling indicative of a previous water damage. It was also evident on the inspection that some work had been carried out including to the shower room and the hallway floors.

25. The Applicant was represented by Gurmehar Kleir and the Respondent were represented by Mr Beglan of counsel. The council called evidence from their officers who confirmed the contents of their witness statements. The tenant, Mr Jailson Da Silva Rocha gave evidence in which he described the conditions in the premises. He told the Tribunal he was likely to be moving out as he had been offered alternative accommodation. It was put to him in cross examination that he had caused the delay in complying with the EPO as he had failed to give access. This was refuted. The Applicant gave evidence. He was asked why he had not taken enforcement proceedings against the tenant if he was not cooperating. He failed to provide a satisfactory reason other than he had relied on the tenant's good will.

Determination

26, The Tribunal's jurisdiction in dealing with this appeal is defined by Schedule 2, paragraph 11 of the Housing Act 2004 which states:

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(1) This paragraph applies to an appeal to [the appropriate tribunal]1 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.

.....

27. The Tribunal has the benefit of the recent Court of Appeal decision in *Waltham Forest v Hussain* [2023] EWCA Civ 733 which gave guidance in relation to a license appeal which follows the same formulation. The Court of Appeal found as follows:

*Sub-paragraph (2) states that the appeal is to be by way of a re-hearing, but may be determined having regard to matters of which the authority were unaware. The word "but" which introduces the proviso in (b) is important. In this context it enables something to be done which would not otherwise be permitted. Without the proviso, the FTT would not be entitled to consider matters that were unknown to the primary decision-maker. Thus Parliament cannot have intended there to be a re-hearing in the fullest sense. The proviso assists in resolving the issue as to the time at which the question of fitness and propriety must be considered. Were it not there, the FTT would be constrained to consider only those matters that were known to the housing authority, and therefore by necessary implication, known and in existence at the time when the decision was made. That points inexorably to the conclusion that the task of the FTT is to determine whether the decision under appeal was wrong at the time when it was taken. "Wrong", as Upper Tribunal Judge Cooke explained in *Marshall v Waltham Forest LBC* [2020] UKUT 35 (LC), [2020] 1 WLR 3187 at [61]–[62], means in this context that the appellate tribunal disagrees with the original decision despite having accorded it the deference (or "special weight") appropriate to a decision involving the exercise of judgment by the body tasked by Parliament with the primary responsibility for making licensing decisions. It does not mean "wrong in law". Put simply, the question that the FTT must address is, does the Tribunal consider that the authority should have decided the application differently? Parliament intended the licensing decision to be taken by the local housing authority, and their decision should not be treated as a mere step on the path to a final decision being taken by the FTT, based on the latter's own evaluation of the evidence, including matters which could only be relevant if the decision were to be taken afresh as at the date of the appeal.*

The fact that the FTT is empowered by the proviso to consider matters that were not known to the housing authority is an indication that the FTT must make up its own mind on the question of fitness and propriety, when deciding whether the application should have been refused or granted, or whether the licence should have been revoked. Plainly this would encompass a relevant matter which existed at the time of the decision, such as a conviction or relevant professional qualification.

28. In the present case the premises were in an appalling state when we inspected some 6 months after the EPO was served. Significantly there was still evidence of water ingress and the premises appeared to be in a poor condition with walls remaining damp and an active leak underneath the shower tray. We have no doubt that the decision to serve the EPO was the correct one and the Local Authority had

no real basis to decide the case differently. The EPO was imposed when there was significant damp and mould growth due to water ingress from various sources. The tenant should have been rehoused in response to the EPO but he had remained in occupation at least until the date of the hearing. This is regrettable but does not affect the decision either way as the tenant's offer of alternative accommodation post-dates the date that the EPO was served.

Summary

Appeal dismissed.

Judge Shepherd

22nd November 2023

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).