



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

Case reference : **LON/00AT/HPO/2023/0006**

Property : **35 Rochester Avenue, Feltham,
Middlesex, TW13 4EA**

Applicant : **Mr Moustapha Conde**

Representative : **In person with Claudia Sorrentino**

Respondent : **London Borough of Hounslow (the
Council)**

Representative : **Ms Rachel Weir and Mr Stephen
O'Brien both of the Council**

Interested person : **Ms Claudio Sorrentino**

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

Tribunal members : **Judge Dutton
Mr S Mason BSC FRICS**

Venue : **10 Alfred Place, London WC1E 7LR
on 18 January 2024**

Date of decision : **26 January 2024**

DECISION

Decision of the tribunal

- (1) The emergency prohibition order made by the London Borough of Hounslow on 3 April 2023 in respect of 35 Rochester Avenue, Feltham, Middlesex TW13 4EA (the Property) is confirmed. The appeal by Moustapha Conde is therefore dismissed.

Reasons for the tribunal's decision

Introduction

1. Moustapha Conde (Mr Conde) appealed against the making of an emergency prohibition order (EPO) under section 43 of the Housing Act 2004 (the Act) by the Council, in respect of the Property.
2. The EPO was made on 3 April 2023. The appeal to the tribunal was received on 26 April 2023, directions were issued on 12 July 2023 and the matter was heard on 18 January 2024. The tribunal inspected the property prior to the hearing.
3. At the hearing, the appellant appeared in person and was assisted by his wife Claudio Sorrentino by video link from Australia; the respondent was represented by Ms Weir and Mr O'Brien.

Background

4. The Property is a mid-terraced house, in a terrace of 4. The freehold title is owned by Ms Sorrentino, although she told us at the hearing that in actuality Mr Conde was a co-owner, although does not appear on the registered title at HM Land Registry.
5. The applicant is in the process of extensive refurbishment of the Property and during such refurbishment had been allowing 2/3 people to 'lodge' at the Property upon payment of rent. It seems that he was also on occasions living at the Property. It appears that complaints were made to the Council about the works and the number of people living at the Property, which it was initially thought gave rise to an offence under s72 (lack of licensing of an HMO).
6. The details surrounding the initial visit and subsequent attendances are fully set out in the witness statement of Ms Weir dated 6 September 2023. As this document is common to both parties it is not necessary to recount same in any detail. Suffice to say we have carefully noted the contents of same. Initially the inspection was on the basis that there was a breach of s72 and took place on 30 March 2023. Photographs are appended to Ms Weir's statement. In addition, she says she spoke with two men who confirmed they were living at the Property and paying rent. She was also told that third person occupied but was not present at this time.
7. On 31 March 2023, following the unannounced visit an HHSRS assessment was carried out, establishing category 1 hazards. This resulted in the EPO being issued on 3 April 2023. There was a subsequent visit under the provisions of s239 of the Act on 25 May 2023, the details of which are recorded in contemporaneous notes.

8. The EPO prohibits the use of the dwelling as residential accommodation and annexes two schedules as follows:
 - (i) Schedule 1 identifies 8 hazards assessed under the Housing Health and Safety Rating System (HHSRS) as category 1 hazards, namely; Fire hazards throughout the Property; Electrical hazards throughout the Property: Structural collapse and falling elements: Excess cold: Fall on levels: Falls associated with stairs and steps; Falls between levels: Food safety
 - (ii) Schedule 2 identifies all of the work necessary to deal with the hazards that had been identified.
9. The prohibition order was served on the applicant, Ms Sorrentino and the occupiers of the Property. Following service of the prohibition order, the applicant lodged the appeal.

The inspection

10. The tribunal inspected the property on the morning of the hearing.
11. Viewed from the street, it was noted that the numerous refuse bags, shown in earlier photographs had been removed. A new window had been installed at first floor level but the surrounding brickwork had not been rendered.
12. To the rear the garden was still in a somewhat ramshackle state. With building materials and equipment lying around. It also appeared that the block work finish to half the rear wall had not been rendered and were thus not adequately weather proofed and the flat roof eaves to the rear extension were exposed and open.
13. Internally, the Property at the time of our inspection comprised at ground floor level a room being used as a bedroom with ensuite shower room. Beyond that there was a kitchen-diner with patio doors to the rear garden. At first floor level there were bedrooms to front and rear, both with shower rooms and in the attic one bedroom, with it would seem partial plumbing in place to fit a further shower room.
14. The following summary provides an indication of the main problems encountered on this site visit
 - (a) Lack of adequate fire safety arrangements, there being, so far we could ascertain, no connected fire alarm/smoke detector system and no fire doors.

- (b) Inadequate personal washing and toilet facilities. So far as we could see there was only one shower room that was functional and that was the ensuite in the ground floor front room. However, this had an electric light in situ which has exposed wiring.
 - (c) Inadequate provision for the safe and hygienic storage, preparation and cooking of food and poor condition of room surfaces and finishes. The kitchen had exposed wiring adjacent to the gas hob and the electrical switch for the boiler was hanging from the wall. It did appear that the boiler was working and therefore there would be hot water when it was turned on.
 - (d) Safety hazards included exposed wiring throughout.
 - (e) Of additional concern was the lack of a suitable fire wall between the Property and the next-door house. It was possible to see from the attic bedroom into the attic of next door's property which is, in our view a clear fire hazard.
 - (f) It would also seem that none of the works have been conducted under the auspices of the Council's Building Control department. In the bundle at page 119 was an email from Jamal Ali, a Building Control Surveyor for the Council referring to a conversation he had with Mr Conde and the need for a building control application to be made, this stemming, it would seem, from Mr Conde's removal of two chimney breasts and the concerns as to the structural integrity of the Property as a result.
15. In summary, the tribunal's assessment was that perhaps only the front ground floor bedroom could be considered suitable for occupation but not whilst the wiring remained in the condition we saw at our inspection. The remainder of the Property, although improved from the time of the Council's visits and the photographs is not capable of being used for living accommodation.

The law

16. 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 the Housing Health and Safety Rating System (HHSRS).
17. 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 making of an EPO under section 43.

18. By section 8 of the Act, the authority must prepare a statement of the reasons for its decision to take the relevant action.
19. An EPO is an order which prevents specified residential premises being used for all or any purposes. By section 44 the contents of prohibition orders are prescribed.
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(7), entry may be affected without prior notice.
21. Appeals in respect of PO's are dealt with under the provisions of section 45 of the Act

The grounds of appeal

22. The appellant's case is that the Property is his home undergoing renovation and that two people are living there as lodgers, not tenants. He is a resident landlord, that the visit was without giving notice and the Council harassed and bullied the two lodgers. He also alleges that the EPO was in error based on conjecture and hearsay. He states that the effect of the EPO will be to prevent him living in in own home.
23. As set out in his hearing bundle, Mr Conde's grounds of appeal were:
 - (a) As set out in his Complaint at pages 11 and 12 of his bundle, the contents of which we have noted. We have also noted the content of emails passing between Mr Conde and Ms Sorrentino and the Council
 - (b) As contained in his application
 - (c) The tenants were happy with conditions at the property and that he was housing them to prevent homelessness.
24. At the hearing following the inspection, the tribunal took evidence and submissions from the applicant, in respect of each of the grounds of appeal in turn.

The tribunal's reasons for rejecting the appeal

25. The property is in a poor state whilst undergoing the renovation works. It should not have been used as living accommodation. At the time of our inspection there had been improvements from the visit in March 2023. Most ceilings were in place and most internal walls had been plastered. The ensuite shower rooms appeared to be near to completion but were being used, in some cases as storage facilities. However, the wiring was still, in multiple areas unsafe. The lack of fire protection was

a serious issue, especially the lack of fire doors and the access to the neighbour's loft space as a result of the lack of the satisfactory separating wall. There were still trip hazards in respect of the stairs and the loose wiring about the Property. It was still essentially a building site.

26. The inspection on 18 January 2024 still revealed a catalogue of serious hazards that had the potential to cause harm to the occupants, which includes Mr Conde. 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.”

27. In the present case, the tribunal considers there to be a serious threat to both the health and safety of the occupants and the works needed to make the dwelling fit for human habitation are so extensive, that they cannot, at present, be carried out with anyone in residence. The applicant was unable to present any challenge to the hazard ratings assessed by the council. It follows that the council was fully justified in issuing an EPO.

28. As and when works are carried out to the property, Mr Conde can then make an application to revoke the prohibition order. Alternatively, when he has put together a scheme to improve the property, this can then be submitted to the respondent council. If necessary, the prohibition order can be varied. As we indicated to Mr Conde, he must approach the Council's Building Control department before he does more work so that they can approve that which has been done and which requires Building Consent and can approve ongoing works. To an extent the works to be done will be governed by whether or not he intends to use the Property as his own residence, or, as the Council suspects, as an HMO, it being used as such previously. Either way he needs to progress the matter. It may well be that the Property will get to a state when he can live there whilst continuing with finishing off the works, but he will need to agree the position with Council. He does not want to breach the EPO and potentially suffer a claim for a Financial Penalty.

29. In all the circumstances, it is not considered that the decision to serve an EPO was disproportionate. The appeal is therefore dismissed.

Name: Judge Dutton

Date: 26 January 2024

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).