



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

Case reference : **LON/00BG/HPO/2023/0008**

Property : **57 Abbots Wharf, 93 Stainsby Road,
London, E14 6JL**

First Appellant : **Francisco Suarez-Llanos Florez**

Second Appellant : **Mr Abdulaziz Ahmed Mohammad &
Miss Miski Nur Mohamed**

Representative : **Mr Mohammad; Mr Adan Mohamed
Jama attended an interpreter**

Respondent/Council : **London Borough of Tower Hamlets**

Representative : **Ms Andreea Matei and Mr Cengizhan
Arat, Environmental Health Officers of
the Respondent**

Type of application : **Appeal against a prohibition order
Sections 21 and paragraph 7(1) of
Schedule 2 to the Housing Act 2004**

Tribunal : **Mr Charles Norman FRICS
Valuer Chairman
Mr Stephen Wheeler MCIEH, CEnvH**

Date of Hearings : **14 February 2024**

Date of Decision : **20 March 2024**

DECISION

DECISION

- 1. THE TRIBUNAL BY ORDER CONFIRMS THE SUSPENDED PROHIBITION ORDER AND DISMISSES THE APPEAL**
- 2. THE APPLICATION BY THE FIRST APPELLANT FOR AN ORDER FOR REIMBURSEMENT OF TRIBUNAL FEES IS REFUSED**

Background

3. The Tribunal has received an appeal under sections 21 and paragraph 7(1) of Schedule 2 to the Housing Act 2004 ('the Act') against the making of a Suspended Prohibition Order ("SPO") given by the Local Housing Authority ('LHA'). The Respondent has suspended the operation of the Order until 23 October 2023.
4. The basis of the appeal is that the decision made by the Respondent is disproportionate. 57 Abbots Wharf is a one bedroom flat with a living room which incorporates the kitchen. The flat is currently rented to a family consisting of two adults and children aged 11, 8 and 1 year. The Respondent contends that the flat is overcrowded and is only suitable for two adults. The Appellant also contends that there have been procedural errors in service of the SPO.
5. In accordance with paragraph 11(2) to Schedule 2 of the Housing Act 2004, the appeal against a Prohibition Order is to be by way of a re-hearing but may be determined having regard to matters of which the Respondent local authority was unaware.

The Hearing of 22 September 2023

6. At the hearing of 22 September 2023, the First Appellant requested an adjournment as the Respondents' bundle was only sent on 20 September 2023 and contained complex information upon which the first Appellant required advice.
7. Mr Mohammed the appellant's joint tenant also attended the hearing and asked to be added as a Second Appellant, which request the Tribunal granted. The Tribunal also directed the Respondent to serve a witness statement from an appropriate officer to include evidence of the service of the prohibition notice. Directions were given to ensure that the Second Appellant was served with the statements of case from the other parties and that the Second Appellant was given an opportunity to state their case and call witnesses.

The Suspended Prohibition Order

8. The SPO was made on 28 April 2023 and signed by Carol Alexander, environmental health officer at the Respondent council. The basis was that the council was satisfied that category two hazards existed under the Housing Act 2004.
9. The first alleged hazard was overcrowding and lack of space because the current household comprised two adults and three children occupying a one-bedroom flat, satisfactory sleeping arrangements were not possible, and this would affect the ability of school-age children to study leading to increased stress.
10. The second alleged hazard was that the open plan living room/kitchen was being used for sleeping purposes without fire separation between the kitchen area and the living room area. The notice required the reduction in the number of occupants to 2 persons in the property and that the open plan kitchen/living area must not be used for sleeping purposes.
11. The statement of reasons in the SPO may be summarised as follows. Attention was drawn to the flat following a complaint about noise. Upon inspection it was found that the flat was occupied by two adults and three children. The tenancy agreement permitted occupancy by two adults and one child. As at the date of the SPO the two oldest children are counted as one person each and the youngest child as half a person giving a combined occupancy of 4.5 persons. The council considered that enforcement was necessary. It referred to and dismissed alternative forms of enforcement as being inappropriate or ineffective. It found that current conditions at the property presented risks to the health and safety of persons occupying or visiting and that it was not physically possible to remedy the hazards owing to the number of occupants. It found that service of a SPO to be the most appropriate course of action.

The law

12. Legislation concerning Prohibition Notices is set out in the Legal Annex attached.

Inspection of 22 September 2023

13. The Tribunal inspected the property on 22 September 2023 in the presence of the First and Second Appellants and the Respondents. The property is a one bedroom flat with a separate living room/kitchen. The flat is in a modern block constructed within the last 10 years or so.

The First Appellant's case

14. the First Appellant raised a range of matters including the conduct of the council which are outside the Tribunal's jurisdiction. The Tribunal therefore refers only to those matters with which it is concerned in this appeal. On that basis the first Appellant's case may be summarised as follows. The flat size was 50 m² which made it habitable for one couple of adults and three small children. The youngest child could sleep in the main bedroom of about 15 m² where the adults sleep, and the other two children could comfortably sleep in the living room of 20 m². The council failed to notify the tenants of the SPO, and they were not therefore informed of their right to appeal. The tenants are a vulnerable family living on benefits and it is unlikely they will find suitable alternative accommodation. They will leave the property once rehoused by the council. It is unlikely that the tenants will feel less overcrowded living in a hotel with a maximum of 20m² compared with their current living space. Vulnerable families spend at least six months in hotels provided by the council. This will be disruptive to the children. The council decision is arbitrary. The council was provided with an electricity certificate in November 2022 and a gas certificate in November 2022 and March 2023. A smoke detector was replaced by the Fire Brigade and the risk of fire in the kitchen is minimal. There is almost no risk of a fire hazard. The First Appellant submitted that the SPO should be quashed as being unfair and disproportionate, or alternatively amended to give a maximum occupancy of three persons.

The Second Appellants Case

15. This may be summarised as follows. Firstly the Second Appellant adopted the First Appellant's case. The Respondent never notified the appellant of the service of the SPO. This seriously prejudiced the Second Appellant's right of appeal. They were only made aware when the landlord informed them of the Tribunal's inspection a few days before that took place [22 September 2023]. Consequently the Second Appellant had only had two months to file their appeal and prepare for the hearing. This is worsened by the fact that their ability to speak and read English is limited. The Respondent had never engaged with the Second Appellant. The Second Appellant are vulnerable family in receipt of benefits and awaiting social housing from the Respondent council. They are terrified of the prospect of needing to move to a hotel which will affect their comfort and their ability to cook meals: according to their culture, and have a social life where relatives and friends are welcome to visit. There will be a massive psychological impact on the children. The Second Appellants would be happy to move to alternative accommodation, excluding hotels or bed and breakfast. The Second Appellant submitted that the SPO should be quashed because of the procedural errors stated above and the social consequences of the SPO coming into force.
16. Ms Miski Nur Mohamed submitted that she was new to the UK; she attended college to learn English. The children attended different schools and any move would cause practical difficulties for her.

The Respondent's Case

17. The Respondent's case was set out in a formal witness statement prepared by Ms Andrea Matei dated 31 October 2023. Ms Matei is a Housing Standards Officer at the council. Ms Matei's witness statement addresses some matters outside the Tribunal's jurisdiction and the Tribunal therefore only addresses relevant matters. The environmental health officer dealing with the matter at the time was Ms Carol Alexander who left the council during 2023.
18. Ms Matei stated that on 6 April 2023 a meeting was held with the council's management. Ms Alexander carried out an HHSRS scoring and identified overcrowding and fire as category two hazards. Ms Matei subsequently identified an error in the [Housing Health And Safety Rating System] ["HHSRS"] scoring and carried out her own assessment. This gave overcrowding and fire as high category two hazards. This difference would not have changed the enforcement action taken by the council. In making the decision to issue the SPO, the council considered Part X 10 of the Housing Act 1985, the HHSRS score, operating guidance regarding overcrowding and fire, a LACORS Housing Fire Safety, Overcrowding document from the House of Commons library and health impacts of overcrowding from the Marmot Review.
19. The SPO was sent to the First Appellant on 28 April 2023 by email and post. A copy was posted to the tenant as evidenced in an email sent by the tenant on 31 May 2023 to Housing Options [part of the Respondent] Subsequently on 3 August 2023 Ms Alexander emailed Housing Options within the council to identify the housing officer assisting the tenants with their housing issue. The tenants first approach the council on 28 January 2022 in relation to the overcrowding situation of the property.
20. During cross examination Ms Matei stated that following a serious fire in Shadwell in a heavily overcrowded 2 bedroom property the council had adopted a "zero-tolerance" approach to overcrowding. She accepted that alternative accommodation would presently be bed and breakfast but that this presented a much lower fire risk. The guidance to which she referred prevented open plan kitchen/living room accommodation being used for sleeping by adults as well as children.
21. In response to questioning by the Tribunal Ms Matei stated there would be no significantly enhanced fire hazard at the subject property if the flat had been occupied by a single person or couple without children. She also accepted that a HHSRS assessment for fire should be an objective assessment, disregarding the current occupiers. Any enhanced likelihood of harm from fire associated with overcrowding should be included within an overcrowding assessment rather than a separate assessment of harm from fire. Ms Matei then went on to state

that this would have resulted in her assessing there to be a category 1 hazard for overcrowding.

Findings

Procedure

22. The Tribunal is satisfied from documentary evidence provided in the form of an email from the Second Appellant to a Kingsley Madueke dated 31 May 2023 and which appended a copy of the SPO that the Second Appellant was served with notice. That email included photographs dated 21 May 2023 which showed the SPO. The Tribunal notes that the tenants were shown as copied into the Respondent's covering letter for the notice dated 28 April 2023. Therefore the Tribunal finds on the balance of probabilities that the SPO was correctly served on the Second Appellant.
23. In any event the tenant suffered no prejudice in responding to the Tribunal proceedings because the Tribunal joined him and his wife as Second Appellant at the hearing of 22 September 2023. The Tribunal directed that the other parties provide the Second Appellant with their bundles (see above). At the hearing the Second Appellant confirmed that he had received such documents. In addition the Second Appellants made their own representations to the Tribunal prior to the resumed hearing of 14 February 2024, which the Tribunal has considered. The Tribunal arranged for the Second Appellant to have an interpreter at the resumed hearing. It also required Ms Matei to read out her witness statement (except appendices) to assist the Second Appellants to follow the evidence.

The decision to make the SPO

24. There was no dispute between the parties that the flat was a one bedroom flat currently occupied by 4.5 persons. The Tribunal found that Ms Matei was a credible witness and accepts her evidence. The Tribunal finds that the property was and remains manifestly and seriously overcrowded. It also accepts Ms Matei's evidence that the lack of fire separation between kitchen and living room significantly adds to the likelihood of harm from fire where there is overcrowding, and the living room is used for sleeping purposes. The Tribunal considers that the HHSRS assessment for fire should be an objective assessment that disregards the current occupiers. This is a modern flat of a relatively standard design and there is no significantly enhanced HHSRS fire hazard as compared with other flats. A HHSRS assessment for overcrowding differs from other hazards in that it is necessary to take into account the current occupiers and the space available. The severe overcrowding at this flat, the use of the living room for sleeping purposes and the associated increased likelihood of harm from fire is such that the Tribunal has assessed there to be a band B category 1 hazard for "Crowding and Space" (i.e. overcrowding). The Tribunal

therefore agrees with the Respondent's decision to serve a prohibition notice.

25. The Tribunal has taken into account the fact that regrettably any move of the family will be disruptive and unfortunately will lead to a period living in bed and breakfast accommodation, which will alter their lifestyle. However, the safety and welfare of both the adults and children must come first.
26. It also considers that the Respondent should have made an immediate Prohibition Order to remove the risk as soon as possible. However, as the SPO suspension expired on 23 October 2023 it is no longer suspended. Therefore, in confirming the SPO which the Tribunal does, there is no difference in outcome.

Reimbursement of Tribunal Fees

27. The Respondents have been unsuccessful in the appeal and the application is therefore refused.

Mr Charles Norman FRICS

20 March 2024

ANNEX - RIGHTS OF APPEAL

- The Tribunal is required to set out rights of appeal against its decisions by virtue of the rule 36 (2)(c) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 and these are set out below.
- If a party wishes to appeal against 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.

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LEGAL ANNEX
HOUSING ACT 2004 EXTRACTS

9 Guidance about inspections and enforcement action

- (1) The appropriate national authority may give guidance to local housing authorities about exercising—
- (a) their functions under this Chapter in relation to the inspection of premises and the assessment of hazards,
 - (b) their functions under Chapter 2 of this Part in relation to improvement notices, prohibition orders or hazard awareness notices,
 - (c) their functions under Chapter 3 in relation to emergency remedial action and emergency prohibition orders, or
 - (d) their functions under Part 9 of the Housing Act 1985 (c 68) in relation to demolition orders and slum clearance.
- (2) A local housing authority must have regard to any guidance for the time being given under this section.
- [...]

Prohibition orders

20 Prohibition orders relating to category 1 hazards: duty of authority to make order

- (1) If—
- (a) the local housing authority are satisfied that a category 1 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,
- making a prohibition order under this section in respect of the hazard is a course of action available to the authority in relation to the hazard for the purposes of section 5 (category 1 hazards: general duty to take enforcement action).
- (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) and section 22.
- (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.

Paragraphs (b) and (c) are subject to subsection (4).

(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.

(5) A prohibition order under this section may relate to more than one category 1 hazard on the same premises or in the same building containing one or more flats.

(6) The operation of a prohibition order under this section may be suspended in accordance with section 23.

21 Prohibition orders relating to category 2 hazards: power of authority to make order

(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 subsection (3) and 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.

(4) A prohibition order under this section may relate to more than one category 2 hazard on the same premises or in the same building containing one or more flats.

(5) A prohibition order under this section may be combined in one document with an order under section 20 where they impose prohibitions on the use of the same premises or on the use of premises in the same building containing one or more flats.

(6) The operation of a prohibition order under this section may be suspended in accordance with section 23.

27 Service of copies of prohibition orders etc and related appeals

Schedule 2 (which deals with the service of copies of prohibition orders, and notices relating to their revocation or variation, and with related appeals) has effect.

SCHEDULE 2 PROCEDURE AND APPEALS RELATING TO PROHIBITION ORDERS

Section 27

Part 1

Service of Copies of Prohibition Orders

Service on owners and occupiers of dwelling or HMO which is not a flat

1

(1) This paragraph applies to a prohibition order where the specified premises are a dwelling or HMO which is not a flat.

(2) The authority must serve copies of the order on every person who, to their knowledge, is—

(a) an owner or occupier of the whole or part of the specified premises;

(b) authorised to permit persons to occupy the whole or part of those premises; or

(c) a mortgagee of the whole or part of those premises.

(3) The copies required to be served under sub-paragraph (2) must be served within the period of seven days beginning with the day on which the order is made.

(4) A copy of the order is to be regarded as having been served on every occupier in accordance with sub-paragraphs (2)(a) and (3) if a copy of the order is fixed to some conspicuous part of the specified premises within the period of seven days mentioned in sub-paragraph (3).

Service on owners and occupiers of building containing flats etc

2

(1) This paragraph applies to a prohibition order where the specified premises consist of or include the whole or any part of a building containing one or more flats or any common parts of such a building.

(2) The authority must serve copies of the order on every person who, to their knowledge, is—

(a) an owner or occupier of the whole or part of the building;

(b) authorised to permit persons to occupy the whole or part of the building; or

(c) a mortgagee of the whole or part of the building.

(3) Where the specified premises consist of or include any external common parts of such a building, the authority must, in addition to complying with sub-paragraph (2), serve copies of the order on every person who, to their knowledge, is an owner or mortgagee of the premises in which the common parts are comprised.

(4) The copies required to be served under sub-paragraph (2) or (3) must be served within the period of seven days beginning with the day on which the order is made.

(5) A copy of the order is to be regarded as having been served on every occupier in accordance with sub-paragraphs (2)(a) and (4) if a copy of the order is fixed to some conspicuous part of the building within the period of seven days mentioned in sub-paragraph (4).

Part 3

Appeals Relating to Prohibition Orders

Appeal against prohibition order

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 under section 11 or 12 of this Act;

(b) serving a hazard awareness notice under section 28 or 29 of this Act;

(c) making a demolition order under section 265 of the Housing Act 1985 (c 68).

Appeal against decision relating to revocation or variation of prohibition order

9

A relevant person may appeal to [the appropriate Tribunal] against—

(a) a decision by the local housing authority to vary a prohibition order, or

(b) a decision by the authority to refuse to revoke or vary a prohibition order.

Time limit for appeal

10

(1) Any appeal under paragraph 7 must be made within the period of 28 days beginning with the date specified in the prohibition order as the date on which the order was made.

(2) Any appeal under paragraph 9 must be made within the period of 28 days beginning with the date specified in the notice under paragraph 3 or 5 as the date on which the decision concerned was made.

(3) [The appropriate Tribunal] may allow an appeal to be made to it after the end of the period mentioned in sub-paragraph (1) or (2) if it is satisfied that there is a good reason for the failure to appeal before the end of that period (and for any delay since then in applying for permission to appeal out of time).

Powers of . . . Tribunal on appeal under paragraph 7

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.
- (3) Sub-paragraph (4) applies where—
 - (a) an appeal under paragraph 7 is allowed against a prohibition order made in respect of a particular hazard; and
 - (b) the reason, or one of the reasons, for allowing the appeal is that one of the courses of action mentioned in paragraph 8(2) is the best course of action in relation to that hazard.
- (4) The Tribunal must, if requested to do so by the appellant or the local housing authority, include in its decision a finding to that effect and identifying the course of action concerned.

Powers of . . . Tribunal on appeal under paragraph 9

13

- (1) This paragraph applies to an appeal to [the appropriate Tribunal] under paragraph 9.
- (2) Paragraph 11(2) applies to such an appeal as it applies to an appeal under paragraph 7.

(3) The Tribunal may by order confirm, reverse or vary the decision of the local housing authority.

(4) If the appeal is against a decision of the authority to refuse to revoke a prohibition order, the Tribunal may make an order revoking the prohibition order as from a date specified in its order.

“The operative time” for the purposes of section 24(5)

14

(1) This paragraph defines “the operative time” for the purposes of section 24(5) (operation of prohibition orders).

(2) If an appeal is made under paragraph 7 against a prohibition order which is not suspended, and a decision on the appeal is given which confirms the order, “the operative time” is as follows—

(a) if the period within which an appeal to the [Upper Tribunal] may be brought expires without such an appeal having been brought, “the operative time” is the end of that period;

(b) if an appeal to the [Upper Tribunal] is brought, “the operative time” is the time when a decision is given on the appeal which confirms the order.

(3) If an appeal is made under paragraph 7 against a prohibition order which is suspended, and a decision is given on the appeal which confirms the order, “the operative time” is as follows—

(a) the time that would be the operative time under sub-paragraph (2) if the order were not suspended, or

(b) if later, the time when the suspension ends.

(4) For the purposes of sub-paragraph (2) or (3)—

(a) the withdrawal of an appeal has the same effect as a decision which confirms the notice, and

(b) references to a decision which confirms the order are to a decision which confirms it with or without variation.

“The operative time” for the purposes of section 25(7)

15

(1) This paragraph defines “the operative time” for the purposes of section 25(7) (revocation or variation of prohibition orders).

(2) If no appeal is made under paragraph 9 before the end of the period of 28 days mentioned in paragraph 10(2), “the operative time” is the end of that period.

(3) If an appeal is made under paragraph 10 within that period and a decision is given on the appeal which confirms the variation, “the operative time” is as follows—

(a) if the period within which an appeal to the [Upper Tribunal] may be brought expires without such an appeal having been brought, “the operative time” is the end of that period;

(b) if an appeal to the [Upper Tribunal] is brought, “the operative time” is the time when a decision is given on the appeal which confirms the variation.

(4) For the purposes of sub-paragraph (3)—

(a) the withdrawal of an appeal has the same effect as a decision which confirms the variation, and

(b) references to a decision which confirms the variation are to a decision which confirms it with or without variation.

Meaning of “relevant person”

16

(1) In this Part of this Schedule “relevant person”, in relation to a prohibition order, means a person who is—

(a) an owner or occupier of the whole or part of the specified premises,

(b) authorised to permit persons to occupy the whole or part of those premises, or

(c) a mortgagee of the whole or part of those premises.

(2) If any specified premises are common parts of a building containing one or more flats, then in relation to those specified premises, “relevant person” means every person who is an owner or mortgagee of the premises in which the common parts are comprised.