



FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference : CHI/29UE/HPO/2024/0003

Property : 9 Hillside Road, Dover, Kent, CT17 0JQ

Applicant : Bernard Potton, Axia Investments Ltd

Representative :

Respondent : Dover District Council

Representative :

Type of Application : Appeal against a Prohibition Order -
Housing Act 2004

Tribunal Member : Regional Judge Whitney
Mr A Crawford FRICS
Ms T Wong

Date of Decision : 18 December 2024

Decision

Background

1. The Applicant seeks to appeal against an Emergency Prohibition Order dated 18 March 2024. The application to the Tribunal was received by email on 29 March 2024.
2. The Tribunal notes that the Emergency Prohibition Order states that significant category 1 hazards existed at the premises. Also attached is a Demand for payment of the sum of £760 being the expenses incurred by the Respondent.
3. The Tribunal issued directions on 26th September 2024 including listing the matter for a video hearing on 26th November 2024. The direction were substantially complied with. An electronic hearing bundle was provided. References in [] are to pdf pages in that bundle. The Respondents also supplied a skeleton argument and bundle of authorities.

Hearing

4. Mr Potton was present. Ms S Beasley, solicitor, attended for the Council together with Ms Hawkins, Ms Pritchard and Mr Neagle all of whom had provided witness evidence.
5. The Tribunal was sitting at Havant Justice Centre. The parties all attended remotely by CVP and the hearing was recorded. Below is a precis of the hearing only.
6. Mr Potton explained that the house as a whole required a serious refurbishment. As yet he had not undertaken any works due to financial constraints. In his opinion he was not sure the Category 1 hazards identified in the Emergency Prohibition Order [37-44] were so serious that a notice was required to be served by the Respondent.
7. Mr Potton relied upon his statement [3-6]. He confirmed the statement was true and accurate. The Tribunal confirmed it had read the same (and all within the bundle) and that this would stand as his evidence.
8. Mr Potton was cross examined.
9. He stated the Property was registered in his name but nominated to his company Axia Investments Limited ("Axia"). He was the director and beneficial owner of Axia.
10. He stated he had very little evidence of the damage caused by the tenants but relied on the photos. He had no inspection records.

11. He agreed that one of the contractors who had given him a quote, Ray, suggested there was no value in an appeal [49]. Ray was a contractor he regularly employed and he felt he would say that to get the work and undertake a full refurbishment in one blitz.
12. Mr Potton explained he delegates responsibility to his assistant. He can see that the Property needs work but is not convinced of the severity. He explained he had run into a financial situation which meant he had no cash available. He was contemplating selling the Property at auction.
13. Mr Potton stated works could not be undertaken with the tenants in situ, he needed the tenants gone to do the work. He suggested the tenants were in arrears [66-67]. He explained he believed there were arrears as a new tenancy was offered to the tenants at a higher rent, although they had not signed the same, he felt that was often the case but believed the tenants were liable for the higher rent.
14. He confirmed [65] was a list of the total costs spent on this Property. Some of these costs were as a result of damage caused by the tenant, some was to comply with his obligations.
15. He was referred to an email from his assistant to the council [340]. He agreed he would have done the works but for his financial problems.
16. Mr Potton was referred to the council officers photographs [191-244]. In his view the items highlighted matters that were easily remediable.
17. Mr Potton was asked questions by the Tribunal.
18. He confirmed pre Covid he had owned some 30 properties. His portfolio had been reduced due to his financial circumstances and he now owned about 10 properties. He had to sell his personal home in May 2024.
19. He could not say when he last visited the Property, he thought probably since covid. He did not know when his assistant had visited or when Ray would have visited prior to providing the quote.
20. He believed he had acted lawfully at all times in conducting the tenancy. He was not a member of any Landlord bodies.
21. Mr Potton stated that his administrator deals with the tenants and organises repairs. There was no surrender of the tenancy, the tenants had moved out.
22. Mr Potton confirmed he did not wish to cross examine the Respondent's witnesses. It was agreed that the witness statements could stand as their evidence in chief.

23. Ms Beasley took the hearing through her skeleton argument.
24. The various HHSRS category scores were at [294 & 295]. She explained the officers had assessed the whole Property on the basis of the most vulnerable group. She explained how the Housing Act was applied to the question of enforcement.
25. Ms Beasley suggested the evidence of the officers was clear that there was an imminent risk of serious harm to the actual occupiers of the Property from Category 1 hazards including the imminent collapse of the kitchen floor (which provided access to the bathroom) and the failed rear door.
26. Ms Beasley reminded the Tribunal that this was a re-hearing whereby it could confirm, vary or revoke the Order but could not substitute an alternative method of enforcement.
27. She suggested that given Mr Potton's stated impecuniosity whatever action had been taken he could not have complied. The tenants had currently been rehomed by the Respondent.
28. Further she suggested that the charges levied by the Respondent were in accordance with their policy and published fees.
29. Mr Potton did not, in her submission, challenge the need for work. Simply the severity. It was for Mr Potton to maintain his Property.

Decision

30. We thank all parties for their helpful and candid submissions.
31. Mr Potton did not raise any challenge as to the process adopted by the Council. We are satisfied that a proper process was followed.
32. Mr Potton does look to challenge what he termed the severity of the notice. We have had particular regard to the statements of the council officers and the photos they exhibited. We find the Property as a whole was (and must still be) in a very poor state of repair. From the photographs it is hard to see how all the disrepair can be laid at the feet of the tenants.
33. We note the Applicant has no inspection records and even at the hearing could not say when the Property was inspected on his behalf prior to the service of the Notice. We take note that even his own regularly employed contractor did not recommend an appeal.
34. We record that Mr Potton on his own evidence is plainly an experienced landlord having owned up to 30 properties. We were surprised by his insistence that the tenants were in arrears, plainly he had not undertaken a lawful increase of the rent pursuant to the

Housing Act 1988. He seemed oblivious to these requirements. Equally it is not clear that this tenancy has ended. The tenants may have moved out due to the service of the Emergency Prohibition Order but it is not clear that their tenancy has actually been ended. Mr Potton would be well advised to take expert legal advice.

35. Mr Potton tried to portray himself as a victim. He is not. He is a landlord and must accept the responsibility that brings.
36. Mr Potton appears to challenge the two specific category 1 hazards. Although we did not inspect we had the benefit of the photographs. Mr Potton did not challenge that they accurately recorded the state of the Property. He simply suggested these two matters could be easily remedied. However even on his own evidence he still has not done so despite saying these could be repaired for a low cost.
37. On considering all the evidence we are satisfied that the two hazards are a category 1 hazard which could lead to an imminent danger to the family occupying the Property. Mr Potton did not appear to specifically challenge this, his challenge seemed to be more aligned with the fact he did not believe that the local authority needed to serve any notice or order upon him.
38. The photographs show the flooring in the kitchen is bowing and rotten. It is plain to this Tribunal even without the witness statements that this floor could collapse at any moment and if this happened any person crossing it could suffer a personal injury. This is particularly so given the family occupying have to cross this area to access the bathroom at the Property.
39. Equally we are satisfied on the evidence that the rear door has failed so that the same is no longer secure.
40. We are satisfied that having identified such Category 1 hazards the Council were required to take action in relation to the same. We are satisfied it was proportionate to serve an Emergency Prohibition Order upon the registered proprietor Mr Potton.
41. We are satisfied that the fees claimed from Mr Potton are in accordance with the Council policy and that it is fair and reasonable to expect Mr Potton to pay the same.
42. For all of the above reasons the appeal fails.

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.