



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

Case Reference : MAN/00BL/HPO/2023/0012

Property : 6 Bradshaw Brow, Bolton, BL2 3DD

Applicant : John Passmore

Respondent : Bolton Council

Representative : Chris Addison of Counsel

Type of Application : Housing Act 2004-Schedule 2, para 7 (1)

Tribunal Members : Judge T N Jackson
Ms J Gittus MRICS

Date and venue of hearing : 14 June 2024

Bolton SSCS Tribunal Centre
Bayley House
St George's Square
Bolton, BL1 2HB

Date of Decision : 16 July 2024

DECISION

Decision

We confirm the Prohibition Order dated 24 May 2023.

Reasons for decision

Introduction

1. The Tribunal has received an appeal in relation to a Prohibition Order in respect of the above Property.

Background

2. The Property is let as a short term let for up to 10 people paid for on a nightly basis. Following an inspection by the Respondent's officers on 17 May 2023 under the Housing, Health, and Safety Rating System ('HHSRS'), it was noted that the basement room contained 2 double beds and a single bed, providing sleeping for 5 occupants. A Category 1 Hazard for Fire Safety was identified during the inspection due to the inadequate means of escape from the basement room. Following the inspection, the Respondent deemed the most appropriate course of action was to prohibit the room as sleeping accommodation and served a Prohibition Order.
3. Following the carrying out of fire safety improvements recommended by a professional fire safety company, the Property was reinspected on 10 January 2024. The Respondent noted that the first three treads to the staircase to the basement room were restricted in width and there was no handrail. The single bed had been removed and there were 2 double beds allowing sleeping arrangements for 4 persons. The former window in the basement room had been replaced with a 'tilt and turn' window. Smoke and heat detectors had been placed in the Property. Following the re-inspection, the Respondent did not revoke the Prohibition Order.

Prohibition Order

4. The Prohibition Order ('the Order') dated 24 May 2023 prohibits the basement from being used as sleeping accommodation. The Order does not prohibit the remaining house to be used and as such the Property could still be rented out for up to 6 people. The Order provides as follows:
5. Schedule 1 (the Deficiency) states that the Fire Safety Hazard is:
 - a. *'Inadequate means of escape from the basement room which is currently used as a sleeping accommodation. The means of escape is via a room of higher risk (kitchen) and there is no secondary means of escape via the window.'*
 - b. *No smoke detection in the basement room'.*
6. The Order stated that the authority would revoke the Order if the following remedial action was taken, namely:

Schedule 2 ('Works needed to reduce the risk):

- a. *In order to reduce the risk, the means of escape would have to exit via a route of lower risk e.g lounge, or hallway.*
- b. *Supply and fit a smoke detector to the ceiling of the basement. Ensure it has a ten year, tamper- proof battery.'*

NOTE:

Alternative works can be agreed between the owner and local authority to suitable reduce or eliminate the hazards identified in schedule 1. Any alternative works must be agreed by the Local Authority before work is commenced and must be carried out within the time specified on the accompanying notice (if served). Separate Building Regulation approval may also be required for certain works.'

7. The Prohibition Order was accompanied by a Statement of Reasons as to why a Prohibition Order was the most appropriate Order, as opposed to no order or another form of order.

Inspection

8. The Tribunal inspected the Property on the morning of the hearing. In attendance were Rubia Masa, the Applicant's agent, and Chris Addison, Counsel and Gail Harrison, Housing Standards Manager, on behalf of the Respondent.
9. The Property is a 3 bedroomed solid stone mid terrace property built approx. 1880. On entry to the Property there is an enclosed hallway and stairs leading to the first floor. There is a lounge to the front of the Property located on the ground floor. The lounge is open plan into the kitchen with patio doors leading to an enclosed garden area. There are downstairs toilet facilities. Off the kitchen area, there is a set of stairs leading down into the basement room. On the first floor there are three double bedrooms and a family bathroom.
10. The basement room has a door which is not self -closing nor a fire door. It can be locked from the inside. It has a window to the front of the Property approximately 90 cm high from the floor of which approximately half comprises a 'tilt and turn' mechanism to allow the window to open from either the top or on the right side. The window leads into what is regionally known as 'the coal drop', an enclosed area measuring 140cm high x 135cm length x 47 cm wide. At the top of the coal drop is a metal grill at pavement level. At the inspection, a Tribunal Member went through the window into the enclosed area to check accessibility and ease of egress. The stairs from the basement room exit into the kitchen and face a kitchen island containing a gas hob with clearance of approximately 1.5 metres from the top of the stairs.
11. At the inspection, in the basement room the Tribunal noted that the tilt and turn window had a notice attached to it indicating that it was a fire exit; a fire extinguisher, horn and smoke detector had been fitted; a handrail was fitted to the

left of the stairs to the kitchen and a smoke detector had been fitted at the bottom of the stairs. Gravel had been placed at the floor of the coal drop. These works had been carried out after the service of the Order.

12. The Tribunal noted that there was no emergency lighting in the stairwell leading from the basement.
13. Radio frequency smoke alarms and heat detectors had been fitted throughout the Property as detailed in the fire protection company's report after the service of the Order. There was no fire blanket or extinguisher in the kitchen.

Hearing

14. The hearing was attended by the same parties who attended the inspection.

Submissions

15. Both parties had submitted bundles, including grounds of appeal and response to grounds of appeal and skeleton arguments. The Tribunal had copies of the Prohibition Order and accompanying Statement of Reasons. The Applicant had submitted a letter dated 15 June 2023 from a fire protection company suggesting fire prevention measures; a subsequent Fire report from the same company following the installation of a fire detection system on 25 August 2023; the Landlord Gas Safety Record dated 11 January 2023; invoice for the tilt and turn window in the basement dated 7 September 2023 and letters of support for the use of the Property as a short term let from the residents of 2 and 4 Bradshaw Brow. The Respondent had submitted witness statements from Michael Howard, Environmental Health Officer, Gail Harrison, Housing Safety Manager and Cameron Driver, Enforcement Officer trainee, all employed by the Respondent; an extract from the HHSRS Chapter 4 re Fire Safety, the completed HHSRS scoresheet and a link to the respondent's Enforcement Policy. Both parties had included photographs from the first inspection and subsequently.

The Respondent

16. On the original inspection on 17 May 2023, the Environmental Health Officer noted that a single bed was placed under the window in the basement room. The Environmental Health Officer considered that there was a serious deficiency in the use of the basement as a bedroom, as the means of escape was via a staircase up and entering the open plan kitchen area (high risk) where the gas hob was located at the top of the stairs and was therefore compromised in the event of a fire. There was no handrail to the stairs, no smoke detection provision and no emergency lighting. It was suggested that the secondary means of escape was via an openable window in the basement room. The access was compromised by the location of the beds. Further, the window opens into a former coal drop from the pavement and upwards escape via this route would be prevented due to there being a metal grill at street/pavement level.

17. Following the inspection, the Housing Standards Manager assessed the Property under HHSRS scoring and concluded with a score of 3749 which placed the Hazard score within Band B and therefore a Category 1 Hazard. Having considered Chapter 24 of the HHSRS Operating Guidance, she had altered the Class 2 Harm from the National Average to reflect the lack of a suitable means of escape from the basement namely through the kitchen, a high- risk area and also the secondary means of escape through the basement window into the enclosed coal drop area.
18. Ms Harrison's evidence was that even if all fire detection measures were in place, the kitchen remained a high -risk area and was not an adequate, appropriate and safe means of escape from the basement. Her evidence was that escape from the basement via the window into the coal drop area was not an adequate, appropriate and safe means of escape. The Property is used by short-term occupiers who are likely to be unfamiliar with the layout of the building increasing the risk of harm occurring. An occupier would have to climb onto a windowsill at 90 cm from the floor onto a sill 54cm wide and pull themselves through the window. The window opens into the coal drop which is a small enclosed area (140cm high x 135cm length x 47 cm) which at the time of the Order was uneven ground. Due to the size of the coal drop, the occupier would likely have to crouch before having to push up the metal grill and then pull themselves up 140 cm onto street level and through the metal grill which is 47cm wide.
19. Further, as the metal grill forms part of the public footpath, there is nothing to prevent someone placing something over the grill, e.g. a moped, which would prevent it from being lifted from below.
20. The fact that the Property was a short-term let was an aggravating factor as occupants would not be very familiar with either the layout of the Property or the means of escape. The fact that the basement room was used as a bedroom was also an aggravating factor as the occupants would not be alert for 8-9 hours a night whilst asleep.

The Applicant

21. The Applicant says that following receipt of the Order he instructed a fire protection company to assess the fire safety precautions at the Property and make recommendations as necessary. On 15 June 2023, after inspecting the Property, the fire protection company advised the Applicant that they were of the view that a fully linked Part 6 BS5389-6 fire system with a smoke detector in the basement corridor and basement bedroom; a smoke detector in the front entrance and one in the front room; a heat detector in the kitchen and a smoke detector on the landing area; the removal of one of the beds in the basement and a change in the window to allow it to open and egress in a safe way should suffice.
22. The above fire detection system was installed on 25 August 2024. The window was changed to a 'tilt and turn' window on approximately 7 September 2023. The single bed by the side of the window was removed.

23. The Applicant disputes that the kitchen is a high- risk area as it is a modern safe open plan kitchen. There is adequate clearance of around 1.5 metres between the exit from the stairwell and the gas hob fitted on the kitchen island. The Property has annual gas safety inspections. The tilt and turn window and access to the street above provide a more than adequate secondary means of egress as confirmed by the fire protection company.
24. The Applicant says that a secondary escape route in the case of fire is not a legal requirement. He states that his company manages a much larger six apartment complex sleeping up to 72 guests in central Manchester on 6 stories with the only accessible escape route being the stairwell. The Applicant considers that for the basement area sleeping 4 guests, the secondary means of escape now provided is more than adequate.
25. The Applicant submits that the remedial works in Schedule 2 appear to suggest a reconstruction of the house to allow access via a lower route of risk e.g lounge or hallway and that this is impractical and ludicrous.
26. The Applicant submits that the fire improvement works carried out results in the basement having exactly the same two means of escape as the first floor of the Property, namely the stairwell and, as a secondary means of escape, an easy accessible opening window on that floor.

The Law

27. The Housing Act 2004 introduced a new system for assessing the condition of residential premises operated by reference to the existence of Category 1 and Category 2 Hazards. Section 2 of the Act defines Category 1 and 2 Hazards and provides for Regulations for calculating the seriousness of such Hazards. The relevant Regulations are the Housing Health and Safety Rating System (England) Regulations 2005 (SI 2005/3208) (the HHSRS) which came into force on 6th April 2006.
28. Section 3 of the Act imposes a duty on a local housing authority to keep housing conditions in its area under review. Section 4 imposes a duty on an authority to inspect properties in certain circumstances. If on such an inspection the authority considers that a Category 1 Hazard exists, section 5 imposes a duty to take the appropriate enforcement action. Where the Hazards are rated as Category 2, section 7 provides that the authority has discretion to take enforcement action.
29. Enforcement action in relation to Category 1 Hazards include the following:
 - a. An Improvement Notice;
 - b. A Prohibition Order;
 - c. A Hazard Awareness Notice;
 - d. Taking Emergency Remedial Action;
 - e. An Emergency Prohibition Order;
 - f. Making a Demolition Order;
 - g. Declaring a Clearance Order.

30. Section 22 of the Act sets out the statutory provisions regarding the contents of Prohibition Orders.
31. Section 8 of the Act requires the authority to prepare a Statement of Reasons explaining why they decided to take the relevant action - in this case a Prohibition Order - rather than any of the other kinds of enforcement action available to them. A Prohibition Order prohibits the use of any premises as is specified in the Order.
32. Part 3 of Schedule 2 to the Act provides for appeals against Prohibition Orders and Paragraph 11 states that the appeal is to be by way of a rehearing but may be determined having regard to matters of which the authority was unaware. The Tribunal may confirm, quash or vary the Prohibition Order.
33. Section 9 of the Act provides for the appropriate national authority to give guidance to local housing authorities about exercising their functions under the Act, in particular their functions under Chapter 2 of Part 1 of the Act relating to Prohibition Orders. Section 9(2) provides that an authority must have regard to any such guidance.
34. In 2006, the then Office of the Deputy Prime Minister issued guidance under section 9 relating to HHSRS Operating Guidance (reference 05HMD0385/A) and HHSRS Enforcement Guidance (reference 05HMD0385/B), as amended.

Deliberations

35. We have to consider the Property as it was at the date of the Order, i.e before the fire improvements were made. We have had regard to paras 24.08, 24.11, 24.12, 24.13, 24.17, 24.18, 24.19, 24.21, 24.22, 24.28, 24.32(b) and 24.35 of the HHSRS Operating Guidance Chapter 24 Fire Safety. Approximately half of dwelling fires are related to cooking appliances and over 65% of fires start in the kitchen. Over 32% of deaths in fires starting in the kitchen occurred in the room of origin. The death rate of fires starting in the kitchen is 3 deaths per 1000 fires. There is an increased risk of death related to the number of storeys such that the risk escalates when the accommodation is over two storeys in height. Whilst this paragraph relates to flats, we suggest that the same rationale applies where a basement is used for sleeping thus creating a 'three -storey' property although we accept, that unlike a flat, the basement does not have its own kitchen facilities. An adult living in a building of three storeys or more is roughly 10 times more likely to die in a fire than an adult living in a two-storey house. The design and construction of a building to provide a safe and ready means of escape is identified as a preventative measure and there should be adequate, appropriate and safe means of escape in case of fire from all parts of the Property. Also, occupiers' reactions on discovering fire influences escape. The means of escape from fire is particularly relevant to the spread of harm. If the means of escape allows quick and easy exit from the accommodation then there will probably be less severe harm than if the escape from fire is more difficult.

36. We have reviewed the HHSRS scoresheet which Gail Harrison explained at the hearing and upon which we questioned her. We agree with the scores. After having inspected the Property, the means of escape from the basement room, noting the proximity of the gas hob to the exit from the stairs, and having regard to Chapter 24 of the Operating Guidance, we agree with the Respondent's assessment of it as a Category 1 Hazard. We do not consider use of the basement steps to the kitchen to be an adequate, appropriate and safe means of escape from the basement as the kitchen itself is a high-risk area as detailed above. Whilst we note that three treads at the top of the stairs are restricted in width, after inspection we do not consider this to be significant. We have considered whether the kitchen could be made a less high-risk area, for example by moving the gas hob away from the exit to the basement stairs and the provision of primary means of fire prevention in the kitchen such as heat detector, fire blanket and extinguisher but do not consider that such measures mitigate the risk significantly such as to allow it to be an adequate, appropriate and safe means of escape and thereby remove the Category 1 Fire Hazard.
37. We have considered the secondary means of escape through the original window in the basement and consider that it does not provide an adequate, appropriate and safe means of escape for the same reasons as set out in paragraphs 18-20 above. On inspection, a Tribunal Member accessed the coal drop from the window, although by that date it was the 'tilt and turn' window and the Tribunal saw the difficulties of exiting to street level through the coal drop area once it had been accessed through the window. They also lifted the metal grill and found it to be very heavy. We had also had regard to the need for the means of escape to be available to those with vulnerabilities such as the elderly or children.
38. We note in the photos provided by the Respondent that the refuse wheelie bin is placed immediately next to the grill and could easily mistakenly be placed over part of the metal grill by mistake thus impeding exit from the coal drop area. The Applicant does not have control over the metal grill as it forms part of the public footpath.
39. Having considered that a Category 1 Hazard existed, we then considered whether any form of Order was required and had regard to the Respondent's Enforcement Policy Appendix 5. For the same reasons as set out in the Statement of Reasons attached to the Order, we determine that a Prohibition Order was the appropriate course of action to take in these circumstances.
40. We considered the wording of Schedule 2, (remedial works), which on first reading appeared to be vague. However, after considering the layout of the Property, we do not find the words to be vague, rather they set out what is required to be achieved. We accept that to achieve such an objective will not be easy, but the wording allows the Applicant to consider options available to him. One option discussed at the hearing which had not previously been considered by either party was to relocate the kitchen to the front of the ground floor and the living room to the back which would remove the need to exit the basement through a high-risk room. However, that was a matter for the Applicant to consider and propose to the Respondent if he wished to pursue it.

41. We have attached little weight to the information regarding other properties in the Applicant's portfolio. From the description provided, the Property, particularly the use of a basement room for sleeping and with stairs from the basement to the kitchen, is not comparable. Further, we are required to look at the Property that is the subject of the application.
42. We accept that there is no general legal requirement for a secondary means of escape from fire. However, each property has to be considered on its individual merits as to whether there is adequate, appropriate and safe means of escape in case of fire from all parts of the Property after assessing the likelihood of risk and the severity of harm. In our view, the means of escape from the basement through the kitchen is not adequate, appropriate and safe means of escape in case of fire from the basement, for the reasons explained in paragraph 35 above and therefore consideration needs to be given as to a secondary means of escape.
43. We have considered the fire improvement works carried out after the service of the Order to assess whether we could substitute them for the remedial works required by the Order. However, we do not consider that the works in the kitchen i.e the provision of a heat detector in the kitchen, and the installation of other fire detection measures in the Property have sufficiently mitigated the risk to allow the kitchen to be considered as an adequate, appropriate and safe means of escape in case of fire from the basement. Further, we do not find the secondary means of escape via the new 'tilt and turn' window in the basement to provide a satisfactory secondary means of escape, as, with the exception of the provision of gravel to level the floor of the coal drop, the same concerns exist as are set out at paragraphs 18-20 above and have not been mitigated.
44. Short term let occupiers may not be familiar with the opening mechanism of a tilt and turn window. Further, some occupiers may have difficulty fitting through the window opening.
45. We therefore confirm the Prohibition Order as drafted.

Costs

46. There has been no application for costs by either party and we make no such order.

Appeal

47. If either party is dissatisfied with this decision, they may apply to this Tribunal for permission to appeal to the Upper Tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to the parties and must state the grounds on which they intend to rely in the appeal.

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Judge T N Jackson
16 July 2024