FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AL/HPO/2016/0004**
Property	**:**	**Flat 2, 137 Greenwich South Street, London SE10 8PP**
Appellant	**:**	**Bickley Investments Ltd**
Respondent	**:**	**Royal Borough of Greenwich**
Type of application	**:**	**Appeal against Prohibition Order**
Tribunal	**:**	**Judge Nicol** **Mr CP Gowman MCIEH MCMI**
Venue	**:**	**10 Alfred Place, London WC1E 7LR**
Date of Hearing	**:**	**30th September 2016**

DECISION

The Prohibition Order is confirmed, save that it is suspended for ten weeks until 16th December 2016.

Reasons

1. On 13th May 2016 the Respondent served the Appellant with a Prohibition Order in respect of the subject property, Flat 2, 137 Greenwich South Street, London SE10 8PP. The Appellant's agents, SAS Management, have appealed the order on their behalf under paragraph 7(1) of Schedule 2 to the Housing Act 2004. The appeal is conducted as a re-hearing and the Tribunal may confirm, quash or vary the Prohibition Order.

2. The Tribunal inspected the property on the morning of 30th September 2016 and conducted a hearing later the same day, attended by Mr Sajaid Shaukat of SAS Management on behalf of the Appellant, Mr Steve

Nottage, the responsible officer from the Respondent, and Mr Simon Newman, counsel for the Respondent.

3. The Schedule to the Prohibition Order identified five Category 1 hazards and one Category 2 hazard under the Housing Health and Safety Rating System ("HHSRS") which the Respondent asserted justified the Prohibition Order. SAS Management arranged for works to be carried out which were completed in June 2016. The Respondent accepts that some hazards have now been addressed but that the Prohibition Order remains justified due to the significance of the hazards which remain. The hazards and the deficiencies giving rise to each are dealt with in turn below.

Fire Safety

4. The Respondent alleged that there was a Category 1 fire safety hazard arising from a number of deficiencies.

5. The first deficiency was that the entrance door had no self-closing device, intumescent strips, cold smoke seals nor an internal lock which could operate without a key. It was also alleged that the gap between the door and frame was larger than the maximum of 3mm in several places. Mr Nottage had last inspected in August and he accepted that works had been done to the door but still asserted it needed to be re-hung to address the gap. In fact, on inspection the Tribunal found that the door had a self-closing device, intumescent strips, cold smoke seals and a thumb-turn lock while there were no apparent gaps around the door. Therefore, this deficiency had been addressed satisfactorily.

6. The next deficiency was that the fire and smoke resistance of the ceilings had been severely compromised by the use of non-fire-rated light fittings and a hinged loft hatch to the rear of the reception room. Mr Shaukat asserted that the light fittings had always been fire-rated and that this was not just a mistake but a deliberate lie on Mr Nottage's part, despite the fact that his own expert, Mr Martin Turner BSc (Hons) MCIEH DMS, said the same thing. However, by the time of the hearing it did not matter because Mr Nottage accepted that the lights had been changed to fire-rated fittings so that this deficiency had been addressed satisfactorily.

7. The property has a windowless shower room at the rear which is accessible only through the kitchen. This is contrary to the LACORS guidance which recommends that a user of such a room should not have to pass through a room of greater fire risk such as a kitchen. Mr Nottage felt that there were two possible ways of addressing this, either by installing an inward-opening door onto the communal hallway or by re-arranging the space currently occupied by both the shower room and the kitchen. However, either solution would require substantial disruptive works, leaving the tenant without a kitchen or bathroom for some time, and possibly permissions from the freeholder, planning and building control which might not be granted. As a result, he thought it was

unlikely such works could be completed. This was why he had opted for serving a Prohibition Order rather than an Improvement Notice.

8. Mr Shaukat pointed out that the Appellant is the freeholder so that would not present an issue. However, he asserted that both solutions were impractical (in particular he said there was insufficient space for the suggested door to the communal hallway) and, in such circumstances, the LACORS guidance permitted the arrangement to continue. He also pointed out that the arrangement was such that anyone leaving the shower room would only be passing over a small distance at the corner of the kitchen on the opposite side from the cooker and then through a wide, door-less opening, thereby minimising the risk.

9. The Tribunal has no doubt that the current arrangement of the shower room and kitchen is a fire risk and, if possible, should be eliminated. However, the Tribunal was not satisfied that either party had properly assessed the alternatives. Mr Nottage had not measured the relevant rooms or attempted to establish how his two proposed solutions would work. Even more significantly, Mr Nottage accepted that the fire safety risk had been reduced due to the other deficiencies being addressed but had not recalculated the degree of the hazard – for example, he had originally calculated the hazard in Band C, in Category 1, but was unable to say whether it had dropped to Band D or lower, in Category 2. Mr Shaukat did not suggest that his firm had seriously looked into either of Mr Nottage's proposed solutions.

10. The Appellant needs either to provide a solution to the fire risk or to demonstrate that there is no practical solution. The suspension of the Prohibition Order for a suitable period of time would allow them to come up with either proposals for a solution or evidence that there is not one. Either outcome needs to be measured against an up-to-date calculation of the fire safety risk under the HHSRS. Such material would allow the parties to discuss a mutually acceptable solution but, if they remained in dispute, the Appellant should be able to appeal to this Tribunal against any refusal to revoke or vary the Prohibition Order.

Lighting

11. The subject property has been converted from former shop premises. The bedroom is at the front and between it and the kitchen and shower room at the rear is a reception area. There was a wall between the bedroom and the reception area, creating a windowless room which Mr Nottage identified as leaving insufficient natural lighting such as to constitute a Category 1 hazard. The Appellant's expert, Mr Turner, had recommended reducing the height of the wall but, in the event, the whole wall has been removed, creating what is effectively a studio flat. Mr Nottage accepted that this solution had addressed this hazard satisfactorily.

Excess Cold

12. The street frontage to the subject property consists of entirely of single-glazed windows in metal frames, perhaps suitable for a shopfront, but

not for a domestic dwelling. The Respondent's planning department served an enforcement notice for breach of planning control as long ago as 18th January 2013 which the Tribunal were told has yet to be resolved. Mr Shaukat accepted that the Appellant was required to come up with a solution acceptable to the planning department but that no such solution had yet been presented.

13. In the meantime, Mr Nottage had identified a Category 1 hazard arising from the current arrangement. The Schedule to the Prohibition Order identified the fact that there are two plastic vents which provide no control over heat loss due to having poor insulation qualities and having to be manually operated. Both he and Mr Turner had initially identified the glazing as being double-glazing but, on closer inspection, it is single-glazing. Given that it is such a large area, this would also allow significant heat loss.

14. Again, the Tribunal has no doubt that there is a hazard of excess cold which has yet to be addressed. It is highly likely that the current arrangement will change, through the operation of planning control if not due to the effect of the Prohibition Order. The Tribunal is mystified as to why the Appellant has yet to come up with any concrete proposals. Mr Shaukat indicated that he intended to install secondary glazing as a short-term solution and would require a ten-week period to come up with a solution which should satisfy both the planning department and the environmental health department.

15. Again, the Tribunal is satisfied that a suspension of the Prohibition Order for a suitable period of time would allow the Appellant and their agents to come up with suitable proposals which the parties can then discuss. Again, if they remained in dispute, the Appellant should be able to appeal to this Tribunal against any refusal to revoke or vary the Prohibition Order.

Noise

16. The aforementioned arrangement at the front of the property also allows traffic noise to penetrate easily. The front of the property is directly on the pavement, right next to the road. Greenwich South Street is not a main route but it is a reasonably busy road which is on a bus route. The property is also located near the end of the street where there is a crossroads with the very busy A2. Mr Turner dismissed the significance of the noise hazard on the basis that the street did not seem busy but he admitted his ignorance of the locality. The Tribunal's own knowledge of the area would suggest that Mr Nottage is correct to identify a noise issue and Mr Turner is wrong.

17. In any event, the solution to the excess cold, already discussed above, should also provide a suitable solution to the noise issue. The aforementioned proposals to be made during a period of suspension for the Prohibition Order should adequately address both problems.

Falls on Stairs and Steps

18. There are four steps up from the reception area to the bedroom. The Schedule to the Prohibition Order identified that there was a slippery, polished timber surface which constituted a Category 1 hazard. This has now been addressed by the installation of carpeting on the steps and Mr Nottage accepted that this had addressed the hazard satisfactorily.

Damp and mould

19. The wall between the bedroom and the reception area had left the reception area not only with inadequate natural lighting but also allegedly with inadequate ventilation. Mr Nottage accepted that this had been addressed by the removal of the wall but the parties remained in dispute about the ventilation from the shower room and the kitchen.

20. At the time of the Prohibition Order, neither the shower room nor the kitchen had ventilation which vented to the outside. Mr Nottage also found on his original inspection that there was no overrun to the mechanical ventilation in the shower room – Mr Shaukat disputed that.

21. On inspection, the Tribunal was shown that there were ventilation systems in both rooms which Mr Shaukat said vented through a common system to the outside. The shower room ventilation also clearly has an overrun although the Tribunal was unable to see how long it operated for. There are also now trickle vents in the skylight which is the only window to the kitchen. It is unfortunate that Mr Shaukat refused to allow Mr Nottage to join the Tribunal's inspection (somewhat improbably on the basis that the tenant, absent during the inspection, had refused permission) because he was unable to see whether he could verify Mr Shaukat's claims.

22. Having said that, on his last inspection in August, Mr Nottage was unable to identify whether the kitchen ventilation vented to the outside. Again, a period of suspension of the Prohibition Order should provide him with a suitable opportunity. The Appellant would be best advised to do what they can to ensure that he has that opportunity.

Conclusions

23. It is to the Appellant's credit that many of the hazards identified by the Respondent at the subject property have been addressed. However, the fire safety hazard has only been partially addressed while the excess cold and noise hazards have not been addressed at all, despite additional action by the planning department. The Tribunal agrees with the Respondent that those hazards must be addressed and, unless and until the Appellant comes up with compelling evidence and proposals to demonstrate otherwise, the required works would appear to be too extensive to permit a tenant to continue to occupy the property while they are carried out. That is why it is appropriate for there to be a Prohibition Order.

24. However, the Appellant has been just about able to convince the Tribunal that there is sufficient intent to address the remaining hazards if given

the opportunity to do so. This is demonstrated principally by the fact that work was done soon after the Prohibition Order to address many of the hazards identified in the Order. Therefore, it is appropriate to give the Appellant sufficient time to make proposals to address the remaining hazards. According to Mr Shaukat, ten weeks will be sufficient to address the issues at the front of the property and, in the Tribunal's opinion, that should be sufficient to make proposals to address the fire safety hazard and for Mr Nottage to check the ventilation arrangements.

25. The idea is that the parties will discuss the Appellant's proposals in order to reach a mutually acceptable solution. This is difficult because Mr Shaukat and his colleagues at SAS Management are antagnonistic to Mr Nottage. The papers before the Tribunal included allegations that Mr Nottage was lying about many things and did so because he was motivated by a racist attitude to the Appellant and their agents. The lies were said to include many about the existence of many of the hazards but, in fact, the Appellant's own expert, Mr Turner, agreed with Mr Nottage on the majority of matters and made clear that, where he differed, it was a matter principally of professional opinion.

26. Mr Shaukat did not even attempt to raise, let alone pursue, any allegation of racial discrimination against Mr Nottage or the Respondent during the hearing. The Tribunal expressed its concern to Mr Shaukat about this. If a party makes such serious allegations at any time, they must be prepared to back them up with evidence and to make their case when the opportunity comes. Racial discrimination exists and the tribunals and courts have an important role in addressing it. However, efforts to combat it are undermined when allegations are made which are false or for which no evidence exists. It is the worst of all possible options to make such allegations and then do nothing about them.

27. Mr Shaukat had the opportunity in the hearing to cross-examine Mr Nottage. He used the majority of that time to attempt to undermine Mr Nottage's credibility by suggesting that he had not sought to take action in respect of a number of neighbouring properties despite similar issues. Mr Nottage was able to answer the points put to him and Mr Shaukat had little or no evidence to be able to gainsay him.

28. In any event, the Tribunal did not understand why Mr Shaukat placed so much emphasis on questioning Mr Nottage's good faith since he did not seek to challenge most of his evidence. There was no challenge at any time to any of Mr Nottage's calculations of the hazards while, as has already been mentioned, Mr Turner agreed with the majority of his conclusions. Further, the Tribunal has expertise which it was able to bring to bear on Mr Nottage's evidence. Mr Shaukat did challenge Mr Nottage's view as to the degree of the fire safety hazard caused by the shower room and kitchen arrangement and as to the possible solutions but then compiled no evidence of his own as to the alleged impracticality of those solutions.

29. Mr Shaukat informed the Tribunal that he had just granted a new fixed term tenancy to the tenant of the subject property. The Prohibition Order will come into force during the currency of that tenancy. Many landlords seem to be under the impression that the only solution to such a situation is to evict the tenant. That is not the case. Other potential solutions include providing alternative accommodation, temporarily for the period of the works or under a new tenancy, with the same landlord or with a different one, or by offering some other form of suitable settlement package which may include payment of compensation. The existence of an ongoing tenancy is not a sufficient reason in or of itself to prevent use of a Prohibition Order – otherwise a landlord could avoid necessary enforcement action simply by granting new tenancies.

30. In the circumstances, the Tribunal has decided to vary the Prohibition Order by suspending it for ten weeks.

Name: NK Nicol **Date:** 6th October 2016