



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

Case Reference : **MR/LON/00BK/HPO/2017/0004**

Property : **Mezzanine Flat, 69 Warwick Avenue, London W9 2PP**

Applicant : **Ms Jade Hudson**

Representative : **Mr. Christian Hudson**

Respondents : **(1) Westminster City Council
(2) Mr. Raymond Corbett**

Representative : **(1) Ms Kirsty Panton, counsel instructed by Ms C Vachino, Tri Borough Shared Legal Services
(2) In person**

Type of Application : **Appeal against a Prohibition Order**

Tribunal Members : **Judge LM Tagliavini
Mr. Mel Cairns, MCIEH
Mr. O N Miller**

Date and venue of hearing : **10 Alfred Place, London WC1E 7LR
5 May 2017**

Date of Decision : **21 May 2017**

DECISION

The tribunal determines the following:

- (i) The tribunal confirms the Prohibition Order dated 21 December 2016 made pursuant to sections 20 and 21 of the Housing Act 2004, which prohibits the use of the subject property for living accommodation or for sleeping purposes, and declines to quash or vary it.

The application

1. This is an appeal against a Prohibition Order (“the Order”) made in respect of the subject property, which comprises two non-self contained rooms on the first floor and second floor mezzanine rooms of a five storey Victorian terraced house. The house was converted into five self-contained flats pursuant to planning permission granted in 1971, leaving the two rooms subject to the Order outside of these self-contained demises.
2. The lower room on the mezzanine first floor contains a shower sink and toilet cubicle with a platform bed overhead accessed by a alternating step ladder.. The upper room on the second mezzanine floor contains kitchen units and work surface, a washing machine, a microwave and a small table and two chairs. The two rooms are not inter-connected and can only be accessed by way of the communal staircase shared by the self-contained flats in the building.
3. The Applicant sought a cancellation or variation of the Order on the basis that remedial action can be carried out to remove the identified hazards.

The inspection

4. The tribunal were able to inspect the subject premises immediately before the start of the hearing.

The hearing

5. The tribunal held an oral hearing of the application. Mr. Hudson represented the Applicant. Ms Panton of counsel represented Westminster City Council. The second Respondent, the joint long leaseholder of Flat 4 and joint freeholder since 2010, acted in person. The tribunal was provided with a bundle of relevant documents by the second Respondent together with a bundle of witness statements prepared by and on behalf of the second Respondent. The Applicant relied on a small number of documents containing their proposals for the remedial actions outlined above.

The background

6. A lease for the first and second floor mezzanine rooms dated 15 March 1988 between Kent and Sussex Housing Association Ltd and Pavedelta granted a term of 125 years with effect from 24 June 1987 which may have been used as bedsits until 1991 when Pavedelta went into liquidation. The rooms fell into disuse other than for storage until 2004 when they were overhauled and a bed/bath space created in the lower room and a kitchen space created in the upper room. By a lease dated 23 May 2008 the Applicant became the long lessee of the two rooms comprising the subject property. The rooms were initially used by the Applicant and her husband, as a London pied-a-terre until 2011, when the rooms were let through managing agents, most recently at a rent of approximately £1,300 per month. Subsequently, in March 2016 a sub-tenant of the subject premises made a complaint to the first respondent about a heating problem in his premises.
7. On inspection by the first respondent, the premises were found to form a category 1 hazard due to crowding and lack of space, as the bedroom measured 3.89m² after allowing for the space taken by the WC, the shower from the total floor area of 5.89m². Further, the mezzanine level bed provided a cramped sleeping space with approximately only 560mm head clearance. There was also a risk of falls due to the mezzanine platform bed is 2.29m above the floor and has an inadequate and broken balustrade. The stairs to the mezzanine were found to be steep and difficult to use. The bedroom was found to be excessively cold with solid walls, a very large single glazed window and an on-peak electric heater.
8. A category 2 hazard was also found to exist due to the risk of collision and entrapment in the lower room resulting from the 560mm headroom above the mezzanine bed and the steep ladder steps to the bed being located close to the unprotected large glass window.
9. The upper room used as a kitchen measures 5.81m².
10. In support of the proposal to removal these hazards the Applicant proposed reversing the current use of the rooms and creating a bedroom on the first floor with the bathroom and a kitchenette on the mezzanine floor and the loft bed space being boxed in, to create a storage space. Security bars would be placed over windows in both rooms and the heating system upgraded.

The issues

11. Although a number of hazards were identified to exist at the subject premises, the tribunal determined, with the agreement of the parties, that the substantive issue at the heart of this appeal lays the issue of the room dimensions and lack of space. As this appeal is dealt with by way of a rehearing the tribunal also determined that it was appropriate for the Respondents to present their case before the applicant, thereby

providing Miss Hudson with a comprehensive opportunity to hear and respond to the evidence provided in support of the Order made and being retained.

The First Respondent's (the Council) case

12. In opposition to the appeal and in support of the Prohibition Order remaining unchanged, the Council provided the tribunal with a lever arch file of the relevant evidence on which they relied. This contained a witness statement of Trevor Withams dated 24 April 2017, which set out in detail the Council's dealings with the subject property from the grant of planning permission for five flats in 1971, the consideration of a breach of planning rules due to the overhaul of the subject rooms and their current configuration to the more recent inspections and calculations of hazards in accordance with the Housing Health and Safety Rating System (HHSRS).
13. Mr. Withams also gave oral evidence to the tribunal in which he explained how the hazards were identified and categorised utilising the HHSRS Statutory Guidance called the Operating Guidance and issued by the Department for Communities and Local government (DCLG). On his inspection carried out on 5 May 2016 Mr Withams told the tribunal he identified category 1 hazards as crowding and space, falling between levels, excess cold and, as a category 2 hazard, the risk of collision and entrapment. Having identified a category 1 hazard WCC are under a mandatory duty to take the appropriate enforcement action. As the risks were created by the smallness of the areas of the subject rooms it was decided that a Prohibition Order should be served following the earlier service of a Hazard Awareness Notice on 18 November 2016 stating that the rooms should not be used for living accommodation. He also stated that the current arrangements (and also the proposed alterations) would mean that the house constituted a 'House in Multiple Occupation' (HMO) for the purposes of s 254 1(c) of The Housing Act 2004 and as such would require a license. This accommodation would also be inferior WCC's licensing guidance on room sizes in HMOs..
14. Mr. Withams also told the tribunal that there is no prescriptive rule as to room sizes, but in making his determination he had reference to the Housing Quality Indicator System and Metric Handbook which suggests that 6.5m² is a minimum size for single bedrooms. Part 10 of the Housing Act 1985 sets out the definition of statutory overcrowding which had also adopted 6.5m² as a minimum room size (although the Enforcement Guidance for the HHSRS published by ODPM states that authorities are advised as a first step to assess the health and safety implication of overcrowding under part 1 of the 2004 Act rather than relying on parallel use of part 10).

15. Mr. Withams also gave the tribunal worked examples of how the risks had been calculated of real-life hazards both for the ODPM and other local authorities. He accepted that the Applicant's proposals would remove the risks of excess cold, collision and entrapment and falling between levels as well as reduce the crowding/space hazard by creating a new bedroom. Mr. Withams concluded his evidence by stating that the space sizes available would still remain below 6m² in both rooms and the proposed combination of a bathroom and kitchen in one small room would be challenging and still leave the two parts of the letting separated by the common stairway. In his opinion a Category 1 hazard would remain if the rooms were used for residential purposes. Therefore the Council opposed the appeal.

The second Respondent's case

16. Mr. Corbett also provided the tribunal with a lever arch file containing a number of witness statements from current long leaseholders as well as past occupiers of the subject property. In his oral evidence to the tribunal Mr. Corbett told the tribunal that in his opinion the subject rooms are unsuitable for residential occupation due to their size and the experience of their occupier(s) using the communal parts as extensions of their cramped living areas &/or for storage thereby creating noise, odours and disturbance. Mr. Corbett therefore also opposed the Applicant's appeal.

The Applicant's case

17. The Applicant told the tribunal that the subject property was let on a residential lease of 125 years from 1988 and had been inspected by an employee from the Council's Planning Department Office. Subsequently, it had been confirmed that the 2004 works had not resulted in any breaches of planning regulations, as all the works carried out were internal. The Applicant stated that they had always paid Residential Council Tax to the council and ground rent and service charges to the Freeholder in accordance with the terms of their lease.
18. The Applicant accepted that Mr. Withams inspection and report was very thorough, factual and accurate and no challenge was made to the notification and inspection process implemented by the Council. Mr. Hudson told the tribunal that the subject property was let to only one person at a time. He stated his opinion that the property was not an HMO as although it was not self-contained there was no shared use of facilities and as an old property the more recent guidance on room sizes should not apply. In any event the current literature gave only guidance and did not prescribe minimum room sizes as mandatory. Mr. Hudson added that the Prohibition Order was a (financial) blow and the tribunal should exercise its discretion to allow for its continued use as residential accommodation subject to the proposed works.

The tribunal's decision

19. The tribunal finds that both category 1 and 2 hazards exist at the subject property and that by reason of the space and crowding hazards caused by the small size of these two rooms that the Prohibition Order should remain in place.

Reasons for the tribunal's decision

20. In reaching its decision on this rehearing, the tribunal took into account the relevant documentary and oral evidence provided by the parties and had regard to the findings from its own inspection of the subject property. The tribunal finds that the factual evidence provided by the first Respondent is not disputed and that there was no challenge made to the steps taken by the Council as regards its inspection of the subject property or the manner in which the calculation of the category 1 and 2 hazards was carried out or any other administrative steps.
21. The tribunal finds that arguments about whether or not the building is to be regarded as an HMO, is irrelevant to the substantive matter the tribunal must consider, namely whether the subject property has been correctly assessed as containing category 1 and 2 hazards and whether the Prohibition Order has been properly made. The tribunals accepts the evidence of Mr. Withams as providing a thorough explanation of the reasoned manner in which the Council identified the risks at the subject property and the way in which they were calculated as category 1 and 2 hazards.
22. From its own inspection, the tribunal saw the smallness of the rooms and the hazards created. The tribunal also has regard to the relevant provisions of the Housing Act 2004 and accepts that the Council has a mandatory duty to act to prevent the continuation of the identified hazards. The tribunal has regard to its powers to quash, vary or continue the Order under the 2004 Act and is mindful of the financial blow the continued prevention of these rooms as residential property is likely to cause the Applicant.
23. The tribunal is satisfied that the administrative steps have been properly carried out and the Notices required under the 2004 Act have been properly served and contain the prescribed information. The tribunal also finds the risks have been reasonably identified and assessed, the hazards appropriately categorised and the Prohibition Order properly made. Consequently, in light of the absence of any remedial steps that can be taken to increase the size of the subject rooms and the removal of the fundamental objection to thier use as residential accommodation, the tribunal finds the identified crowding

and space hazards cannot be removed by way of a variation or quashing of the Prohibition Order and that its continuation is the only means by which the removal of the space and hazards can be achieved.. Therefore, the tribunal declines to vary or quash the Prohibition Order dated 21 December 2016.

Signed: Judge LM Tagliavini

Dated: 24 May 2017