



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

Case Reference : **BIR/00CS/HEP/2019/0001**

Property : **Flat 6, 170 Bromford Lane, West Bromwich
B70 7HS**

Applicant : **Romesh Gupta**

Respondent : **Sandwell Metropolitan Borough Council**

Type of Application : **An appeal against a prohibition order under
Schedule 2, paragraph 7 (1) of The Housing Act
2004**

Tribunal Members : **V Ward BSc (Hons) FRICS
P Wilson BSc (Hons) LLB MRICS MCIEH
CEnvH**

Date of Decision : **20 September 2019**

DECISION

Background

1. By way of an application made on 12 June 2019, the Applicant, Romesh Gupta, appealed under section 45 (2) of the Housing Act 2004 (“the Act”) against the Emergency Prohibition Order, and demand for associated costs in the sum of £1076.20, made in respect of Flat 6, 170 Bromford Lane, West Bromwich B70 7HS (“the Property”) by the Respondent housing authority, Sandwell Metropolitan Borough Council, on 16 May 2019.
2. Neither party requested a hearing at which oral evidence could be given. Accordingly, the matter was determined on the basis of the written submissions of the parties.

The Emergency Prohibition Order

3. The Emergency Prohibition Order (“the Order”) immediately prohibited the use of the Premises for the purpose of residential accommodation.
4. The Order listed the following Category 1 Hazards at the Property:

Item 1

- Location: Throughout the Property
- Nature of the Hazard (Category 1) – Excess Cold (1)
- Deficiency giving rise to the Hazard:
There is no fixed heating installed
There is a hole in the external wall allowing cold air to enter the Property.
There is no electrical supply, therefore other services will not work including heating.

Item 2

- Location: Shower room kitchen external drainage
- Nature of the Hazard (Category 1) – Personal Hygiene, sanitation and drainage (17)
- Deficiency giving rise to the Hazard:
There is no water supply (either hot or cold) therefore unable to wash effectively.
There is no electricity supply, therefore facilities will not work including hot water or shower and therefore unable to wash effectively.
There are blocked drains.
The toilet is damaged and not flushing.
There is no wash hand basin in the shower room.

Item 3

- Location: Throughout the Property
- Nature of the Hazard (Category 1) – Electrical Hazards (23)
- Deficiency (sic) giving rise to the Hazard:
The fuse box is damaged with a risk of electrocution.
There are broken sockets with exposed wires which could lead to electrocution.

5. The Order included a statement of reasons as follows:

Statement of Reasons for the service of an Emergency Prohibition Order

Housing Act 2004

Premises: Flat 6, 170 Bromford Lane, West Bromwich B70 7HS

The authority is satisfied that hazards exist at the above Premises and that action should be taken in respect of the hazards identified.

In determining the most appropriate course of action, regard has been given to the following:

Views of the Owner

Views of the Occupier

The following actions (in bold) were considered before the authority made its decision:

*The hazards encountered pose an imminent risk to the health and safety to occupiers and visitors to the property so the making of an **Emergency Prohibition** Order is most appropriate in this case.*

*It is considered that the service of an **Improvement Notice** is not the most appropriate course of action because it is not possible to carry out the works (at reasonable cost) to reduce or remove the hazards.*

*The significant nature of the hazards and the risk they pose to potential occupiers and visitors to the property would not warrant the service of a **Hazard Awareness Notice**. This is because advising the person responsible of the existence of the hazards and not requiring action is not considered appropriate.*

*There are no good reasons known to the authority that would warrant considering serving a **Suspended Improvement Notice** or **Suspended Prohibition Order** for a period of time.*

*The high values of property in Sandwell and the demand on available units of accommodation within the area would deem that **Demolition or Clearance** is not the most appropriate course of action.*

Decision

The decision to serve an Emergency Prohibition Order is considered to be the most effective and appropriate means for dealing with the hazards, identified within the curtilage of the property.

Inspection

6. The Tribunal inspected the Property on the morning of 21 August 2019. Present at the inspection were the Applicant, Mr Gupta, and on behalf of the Respondent, Richard Spencer and Richard Hawkins both of the Private Sector Housing Services department.
7. No. 170 Bromford Lane is a two-storey end terrace house built mostly probably during the latter part of the nineteenth century. It has a two-storey rear wing and single storey rear addition, the latter of more recent construction. The subject Property is located in part to the ground floor of the two-storey rear wing and in part in the single storey rear addition. The main house, apparently previously in multiple occupation, is now let to a single household. There is a further property (Flat 7) in the rearmost part of the single storey rear addition. The Property and Flat 7 are both approached from a shared pathway between numbers 170 and 172 Bromford Lane.
8. At the time of inspection, the accommodation comprised a bedsit area (approximately 9.9 m²) with a small kitchen area (approximately 3.2 m²) off and extremely small bathroom area (approximately 1.9 m²) off the kitchen.
9. Refurbishment works appeared to be in progress at the time of inspection. There was only a damaged shower tray in very poor condition present to the bathroom. There was a consumer unit on the left-hand wall of the kitchen which had been damaged badly. The Tribunal noted that the refurbishment works were apparently seeking to address the deficiencies set out in the Emergency Prohibition Order although substantial disrepair and missing/defective amenities remain. However, the Tribunal was particularly concerned to note the arrangements for the provision of services.

10. The current occupier of the main house kindly permitted the Tribunal, along with the Applicant and the representatives of the Respondent, access to the interior of the dwelling. It was noted that the hot water supply to the Property appeared to be taken from the combination boiler to the main house and also that the electrical supply to the Property appeared to be taken from one circuit to the consumer unit to the main house. This means that any occupier of the Property would not have independent control of hot water, electrical supply (and also heating). When inspecting the consumer unit, the cover fell off on light contact with potential exposure to live conductors. The Applicant was made fully aware of the need to ensure speedy rectification of this deficiency.
11. It was clear to the Tribunal that the Property in its condition at the time of inspection is not a self contained flat in that it lacks all the basic amenities and also all services are not independent.

Submissions of the Parties

12. The Tribunal finds it convenient to summarise the submissions of the Respondent first, in order to ascertain the events that lead to the making of the Order.

The Respondent's case

13. On behalf of the respondent, Mr Spencer presented a timeline of events of which the salient points are as follows:

25 February 2019 By arrangement met the Applicant at the Property but were unable to gain access although it was noted that there was waste in the yard of the flat and the door and window were damaged.

5 April 2019 Following abortive attempts, Mr Spencer gained access to the Property by courtesy of the Tenant and carried out an inspection of the same. Mr Spencer noted extensive defects to the Property.

18 April 2019 Following the inspection, a report was prepared. This gave a history of the Property in relation to its occupation and noted severe disrepair issues including:

- Damp and Mould
- No heating
- Hole in the wall big enough to allow pests to come through
- No electricity
- No water supplies (either hot or cold)
- Blocked drains

- Damaged toilet
- No hand basin
- Fuse box is damaged with a risk of electrocution
- Broken sockets
- Poor fire separation due to holes in the ceiling.
- No means of cooking
- Damaged socket

Photographs were included in the Respondent's bundle illustrating the above. Following a consideration of the above, the Property was noted to have three Category 1 Hazards, as listed above.

The report then moved onto to consider the various actions that the Respondent could take and following an overall appraisal, it was determined that the making of an Emergency Prohibition Order was the most appropriate.

14. Following various internal sanctioning procedures, the order was made on 16 May 2019 and hand delivered to both the Property and also the Applicant's correspondence address.
15. Accompanying the Order was a demand for payment of £1076.20 under section 49 of the Act.
16. The Respondent made no submissions with regard to the costs above hence the Tribunal has no way of ascertaining how this sum was arrived at.

The Applicant's case

17. The Applicant provided a history of the Property and in particular his difficulties with the Tenant of the same who was previously an occupier of the main house – 170 Bromford Lane. The Tenant was moved into the Property to allow refurbishment works to the main house. In respect of the defects noted by Mr Spencer, the Applicant commented as follows:

Damage to door and window – Probably caused by Tenant trying to gain access when locked out.

The cooker had been changed by the Tenant but had not been wired in.

The Tenant had attempted to bypass the electricity submeter and had effectively cut the electricity off to the Property.

The Tenant removed the fixed wall heater.

Damp and Mould. If this had been pointed out to the Applicant he could have remedied it.

Damaged socket. This socket was disconnected.

18. The Applicant had provided pictures of the Property internally apparently just before the Tenant moved in. These show little in terms of the condition of the Property.
19. The Applicant also provided photographs of the main house both the room where the Tenant used to reside and also the house after refurbishment.

The statutory framework

20. Section 40 of the Act provides as follows:

(1) If-

- (a) the local authority are satisfied that a Category 1 hazard exists on any residential premises, and*
- (b) they are further satisfied that the hazard involves an imminent risk of serious harm to the health or safety of any of the occupiers or those or any other residential premises, and*
- (c) no management order is in force under Chapter 1 or 2 or Part 4 in relation to the premises mentioned in paragraph (a)*

the taking by the authority of emergency remedial action 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)

(5) Paragraphs 3 to 5 of Schedule 3 (improvement notices: enforcement action by local authorities) apply in connection with the taking of emergency remedial action under this section as they apply in connection with the taking of the remedial action required by an improvement notice which has become operative but has not been complied with.

21. But those paragraphs so apply with the modifications set out in subsection (6):

(6)The modifications are as follows:

- (a) right of entry conferred by paragraph 3(4) may be exercised at any time: and*
- (b) the notice required by paragraph 4 (notice before entering premises) must (instead of being served in accordance with that paragraph) be served on every person, who to the authority's knowledge- (i) is an occupier of the premises in relation to which the authority propose to take emergency remedial action, or (ii) if those*

premises are common parts of a building containing one or more flats, is an occupier of any part of the building: but
(c) that notice is to be regarded as served if a copy of it is fixed to some conspicuous part of the premises or building

22. Section 43 of the Act provides as follows:

(1) If-

(a) the local authority are satisfied that a Category 1 hazard exists on any residential premises, and
(b) they are further satisfied that the hazard involves an imminent risk of serious harm to the health or safety of any of the occupiers of those or any other residential premises, and
(c) no management order is in force under Chapter 1 or 2 or Part 4 in relation to the premises mentioned in paragraph (a)

making an emergency 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) an emergency prohibition order under this section is an order imposing, with immediate effect, such prohibition or prohibitions on the use of any premises as are specified in the order in accordance with subsection (3) and sections 44.

23. Section 239 of the Act provides as follows:

(1) Subsection (3) applies where the local housing authority consider that a survey or examination of any premises is necessary and any of the following conditions is met-

(a) the authority consider that the survey or examination is necessary in order to carry out an inspection under section 4 (1) or otherwise to determine whether any functions under any of Parts 1 to 4 or this Part should be exercised in relation to the premises;
(b) the premises are (within the meaning of Part 1) specified premises in relation to an improvement notice or prohibition order;
(c) a management order is in force under Chapter 1 or 2 of Part 4 in respect of the premises.

(2) Subsection (3) also applies where the proper officer of the local housing authority considers that a survey or examination of any

premises is necessary in order to carry out an inspection under section 4(2).

(3) Where this subsection applies-

- (a) a person authorised by the local housing authority (in a case within subsection (1), or*
- (b) the proper officer (in a case within subsection (2),*

may enter the premises in question at any reasonable time for the purpose of carrying out a survey or examination of the premises.

(5) Before entering any premises in exercise of the power conferred by subsection (3), the authorised person or proper officer must have given at least 24 hours 'notice of his intention to do so-

- (a) to the owner of the premises (if known), and*
- (b) to the occupier (if any).*

24. Paragraph 3 of Schedule 3 of the Act provides:

(1) The local housing authority may themselves take the action required to be taken in relation to a hazard by an improvement notice if sub-paragraph (2) or (3) applies.

(2) This sub-paragraph applies if the notice is not complied with in relation to that hazard.

(3) This sub-paragraph applies if, before the end of the period which under section 30(2) is appropriate for completion of the action specified in the notice in relation to the hazard, they consider that reasonable progress is not being made towards compliance with the notice in relation to the hazard.

(4) Any person authorised in writing by the authority may enter any part of the specified premises for the purposes of the taking of any action which the authority are authorised to take under this paragraph.

(5) The right of entry conferred by sub-paragraph (4) may be exercised at any reasonable time.

(6) Any reference in this Part of this Schedule (of whatever nature) to a local housing authority entering any premises under this paragraph is a reference to their doing so in accordance with sub-paragraph (4).

(7) In this paragraph “improvement notice” means an improvement notice which has become operative under Chapter 2 of Part 1 of this Act.

25. Paragraph 4 of Schedule 3 of the Act provides:

(1) The local housing authority must serve a notice under this paragraph before they enter any premises under paragraph 3 for the purpose of taking action in relation to a hazard.

(2) The notice must identify the improvement notice to which it relates and state—

(a) the premises and hazard concerned;

(b) that the authority intend to enter the premises;

(c) the action which the authority intend to take on the premises; and

(d) the power under which the authority intend to enter the premises and take the action.

(3) The notice must be served on the person on whom the improvement notice was served, and a copy of the notice must be served on any other person who is an occupier of the premises.

(4) The notice and any such copy must be served sufficiently in advance of the time when the authority intend to enter the premises as to give the recipients reasonable notice of the intended entry.

(5) A copy of the notice may also be served on any owner of the premises.

The Tribunal’s deliberations

26. The Tribunal first considered if the Order is valid.

27. Section 239 of the Housing Act 2004 sets out clearly requirements for local housing authority officers to give a minimum of 24 hours notice to both owner and occupier(s) prior to entering a property where they consider a survey or examination of the properties is required in order to carry out an inspection under 4(1) (to determine whether there is a category 1 or category 2 hazard) or otherwise to determine whether they should exercise any of the functions under Parts 1 – 4 of the Act.

28. Where there is a category 1 hazard and an imminent risk of serious harm to the occupiers or others, the local housing authority may either take emergency remedial action or make an emergency prohibition order. It would be reasonable to suppose that the Act would disapply the requirement for 24 hours notice to an owner where there was a category 1 hazard and an imminent risk of serious harm as giving such notice could hamper effective action in what are, by definition, circumstances where one or more people may be at serious risk.
29. Section 40 subsections (5) and (6) appear to do this in the case of emergency remedial action by modifying the notice requirements in Schedule 3 of the Act in particular to allow the right of entry at any reasonable time. However, as referred to specifically in the LACORS (Local Authorities Coordinators of Regulatory Services) guidance (cited in Stewart and Trafford Borough Council referred to below), this relates specifically to the carrying out of remedial work, not to the actual inspection to determine what work is necessary.
30. In *Cheltenham Construction Ltd v Gloucester CC* (CHI/23UE/HER/2007/001) a Tribunal decided that notice of entry was not necessary because the local housing authority were invited to inspect the dwelling by the tenant. In *Jarrett v Nottingham CC* (BIR/00FY/HER/2011/01), a Tribunal did uphold emergency remedial action in respect of a dangerous electric installation where no notice had been given to the owner, agreeing with the argument that section 40(5) & (6) did mean that the absence of such notice did not invalidate the action. It is possible to argue that the decision in *Cheltenham Construction Ltd v Gloucester* is open to question and also that the decision *Jarrett v Nottingham* is also open to question if the argument that section 40(5) & (6) apply only to the carrying out of remedial work and not the inspection is correct.
31. It must also be noted that, whilst the Act appears to recognise there is an issue with notice and emergency remedial action and makes provision (albeit arguably flawed) to disapply the notice requirement in respect of owners, it makes no such provision with regard to emergency prohibition orders, as acknowledged in the LACORS guidance.
32. In *Stewart v Trafford* (MAN/OOBU/HEP /2013/0001), the respondent local housing authority acknowledged that they had not given notice to the owner but relied instead (unsuccessfully) on an argument that the relevant officer was accompanying a Fire Officer and could rely on powers under the Fire and Rescue Services Act 2004. The Tribunal considered specifically

the question of whether Section 40(6) gave a right of entry and decided that it did not.

33. In this case, the Respondent, Sandwell Metropolitan Borough Council, specifically stated that no notice was given to the owner as they do not need to do so. It would appear clear, having regard to the arguments above, that they do and the failure to do so renders the emergency prohibition order invalid.
34. The Tribunal thinks it appropriate to draw attention to the fact that an emergency prohibition order may only be made where there is both a category 1 hazard and an imminent risk of serious harm. From the inspection, it would appear clear that both of these conditions are satisfied and such action was entirely warranted (and would have been upheld had there not been the procedural error in respect of notice). However, leaving aside the issue of notice, the manner in which the Respondent dealt with the case appears open to criticism.
35. It is reasonable to expect that a local housing authority would respond to an imminent risk of serious harm with speedy action. This issue first arose in February 2019 and the Order was not made until the 16 May 2019. It is acknowledged that there was an apparent lack of cooperation from the tenant, but the relevant inspection was carried out on the 5 April 2019 and the Order was not made until some seven weeks later after following procedures for scrutiny by senior officers and the Respondent's legal department. Such timescales are hardly consistent with emergency action where there is an imminent risk of serious harm.
36. In the case of an appeal under section 45 (2), the Tribunal may confirm or vary the emergency prohibition order or make an order revoking it as from a date specified in that order.

Decision

37. For the reasons given in the paragraphs above, the Tribunal revokes the Emergency Prohibition Order made in respect of Flat 6, 170 Bromford Lane, West Bromwich B70 7HS by the Respondent housing authority, Sandwell Metropolitan Borough Council, on 16 May 2019.
38. As the Order is revoked, the costs of £1,076.20 are not payable. It should be noted that no submissions were made in respect of the costs, hence if the Tribunal had confirmed the Order, it would have had no basis upon which to assess them.

Note to the Applicant and the Respondent

39. The Applicant should note that whilst the Order has been revoked because of procedural issues, the Tribunal considered that there are very substantial and serious HHSRS hazards still in existence at the time of its inspection of the Property and that it does not meet the minimum legal standard for housing. **Given the wider obligations of any landlord in England, it may also be said that it is totally unfit for human habitation in its present condition.** The Tribunal does anticipate that there will be timely and appropriate intervention by the Respondent using Housing Act 2004 and associated powers to deal with the present situation.

APPEAL

40. A party seeking permission to appeal this decision must make a written application to the Tribunal for permission to appeal. This application must be received by the Tribunal no later than 28 days after this decision is sent to the parties. Further information is contained within Part 6 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (S.I. 2013 No. 1169).

V Ward

Chairman