



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

**Case reference** : **LON/00BB/HPO/2019/0011**

**Property** : **1 Stafford Road, Forest Gate,  
London E7 8NL**

**Applicant** : **Abid Mushtaq**

**Respondent** : **London Borough of Newham**

**Type of application** : **Appeal in respect of a Prohibition  
Order**

**Tribunal** : **Judge Nicol  
Mr P Roberts Dip Arch RIBA**

**Date and Venue of  
Hearing** : **10<sup>th</sup> January 2020  
10 Alfred Place, London WC1E 7LR**

**Date of Decision** : **13<sup>th</sup> January 2020**

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**DECISION**

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**The Prohibition Order dated 29<sup>th</sup> July 2019 is confirmed.**

Relevant legislation is set out in an Appendix to this decision.

**Reasons**

1. The Applicant lets out rooms at the subject property, a converted end terrace house. In 2016 he constructed an outbuilding to the rear, large enough to contain a living room incorporating a small kitchenette and a shower/WC room. He sought planning permission retrospectively but was refused. He also lost his appeal.
2. In March 2019 the Respondent found the property to be a house in multiple occupation with up to 13 occupants. It should have been licensed but was not. The Applicant applied for an HMO licence and the Respondent granted one on 30<sup>th</sup> May 2019. The licence set the maximum number of occupants and households at 7 of each. The rooms in the

property which they were permitted to occupy was listed – neither the outbuilding nor the basement were included.

3. On the Respondent's first inspection in March, there had been evidence, shown in photos taken at that time and included in the bundle of documents before the Tribunal, that both the outbuilding and the basement were being used for sleeping accommodation. Therefore, Ms Opeyemi Alabi of the Respondent's Private Housing & Environmental Health Team inspected the property on 12<sup>th</sup> June 2019. She found category 1 hazards in relation to both the outbuilding and the basement. They were not being occupied at the time but, in order to ensure that remained the case, the Respondent notified the Applicant on 8<sup>th</sup> July 2019 that they intended to issue a Prohibition Order. The order was issued on 29<sup>th</sup> July 2019.
4. The Respondent's concern with the outbuilding is fire safety, in particular whether there is a safe means of escape. When the Tribunal inspected the property on the morning of 10<sup>th</sup> January 2020, it could be observed that a person exiting the door of the outbuilding into the rear yard would have three possible routes away:
  - (a) To the right is a door into a corridor-like area containing kitchen facilities along one wall, including an oven and a hob. The exit from the kitchen at the other end is a door to the left into a square hall area which leads into another hall which goes to the front door out onto the street. The front door has a threshold and there is a very small step down just inside it.
  - (b) At the time of Ms Alabi's inspection on 12<sup>th</sup> June 2019, the kitchen was the only possible route out. As a result of concerns expressed by Ms Alabi, the Respondent has attempted to provide two other routes. The first is a ladder into a neighbouring property. Either side of the rear yard is a wall, over 5' high, separating it from neighbouring gardens. On leaving the outbuilding, to the left the Respondent has affixed 5 metal loops which operate as steps up the wall. There are no steps on the other side of the wall nor any obvious means of exiting the neighbour's garden.
  - (c) Between the garden wall to the left and the door into the kitchen on the right are French windows into a bedsit unit. Through the French windows, it is possible to travel a total of 8.5 metres through two rooms and a kitchenette into the aforementioned communal square hall area and, again, access via another hall to the street.
5. The Applicant has appealed the Prohibition Order to this Tribunal. His argument was quite simple. Given the severe pressures on local housing, the 3 routes provide a sufficient means of fire escape such that he should not be prohibited from using the outbuilding as sleeping accommodation, whether let separately or together with other parts of the property. The Prohibition Order also prohibited use of the basement for sleeping purposes but this was not appealed.

6. The Tribunal heard the appeal on 10<sup>th</sup> January 2020, in the afternoon after its inspection of the subject property. The Applicant represented himself. The Respondent was represented by Mr Christian Panayi, counsel, accompanied by his witness, Ms Alabi.
7. Mr Panayi took the Tribunal through Ms Alabi's calculation of the hazard rating in relation to fire for the outbuilding with reference to the HHSRS Operating Guidance but the Applicant did not dispute it.
8. Mr Panayi took the Tribunal carefully through the relevant guidance, not only the HHSRS Operating Guidance but also Approved Document B under the Building Regulations 2010 and LACORS guidance "Housing – Fire Safety". Guidance is not binding, either on the Respondent or the Tribunal, but it has been prepared by experts balancing the needs of landlords and tenants in the provision of safe lettings. While it is possible to depart from it in appropriate circumstances, there would need to be good and clear justification for doing so.
9. The Tribunal cannot accept that the ladder on the garden wall is capable of providing a suitable means of escape from fire for an occupier of the outbuilding. Both Approved Document B and the LACORS guidance indicate that fixed ladders should not be used as a means of fire escape and, on this example, it is easy to see why.
10. A user of the ladder would need to be reasonably fit, not least to negotiate the drop on the other side, whereas there is no guarantee that visitors would all have the necessary levels of such fitness. The neighbouring garden is clearly not a place of ultimate safety and so there needs to be access out on to the street. However, that requires either surmounting another garden wall or going through doors into the neighbouring property which are likely to be locked more often than not. Also, there is the question of rights of access. The neighbouring resident provided a handwritten note to indicate that they would have no problem with someone coming into their garden to escape a fire but this is well-short of an enforceable right. A resident does not necessarily have the authority to grant such a right and there is no guarantee that any successor would be as tolerant.
11. The path through the bedsit unit is also barred by lockable doors. Further, the distance from the door of the outbuilding to the front door of the bedsit unit would appear to be in excess of what the guidance would regard as a safe distance, let alone the further distance which must be travelled to reach the street.
12. Although also relying on the point about the distance, Mr Panayi's primary point in relation to both routes through the subject property was that they led through high risk areas. He showed how the outbuilding should be classed under the guidance as an "inner room" and that such rooms should not have fire escapes through other inner rooms except in certain circumstances which did not apply here. The Applicant did not dispute this interpretation of the guidance. To the Tribunal, it cannot be acceptable

that a route should be relied on as a means of fire escape which leads through such a high risk area as a kitchen and involves such a significant distance before it is possible to reach a place of ultimate safety out on the street and away from the building.

13. In the circumstances, the Tribunal agrees with the Respondent's reasoning that there is no adequate means of fire escape from the outbuilding and so it is appropriate to prohibit its use for sleeping purposes. Therefore, the Tribunal has decided to confirm the Prohibition Order.

**Name:** NK Nicol

**Date:** 13<sup>th</sup> January 2020

## **Appendix of relevant legislation**

### **Housing Act 2004**

#### **1 New system for assessing housing conditions and enforcing housing standards**

- (1) This Part provides—
  - (a) for a new system of assessing the condition of residential premises, and
  - (b) for that system to be used in the enforcement of housing standards in relation to such premises.
- (2) The new system—
  - (a) operates by reference to the existence of category 1 or category 2 hazards on residential premises (see section 2), and
  - (b) replaces the existing system based on the test of fitness for human habitation contained in section 604 of the Housing Act 1985 (c. 68).
- (3) The kinds of enforcement action which are to involve the use of the new system are—
  - (a) the new kinds of enforcement action contained in Chapter 2 (improvement notices, prohibition orders and hazard awareness notices),
  - (b) the new emergency measures contained in Chapter 3 (emergency remedial action and emergency prohibition orders), and
  - (c) the existing kinds of enforcement action dealt with in Chapter 4 (demolition orders and slum clearance declarations).
- (4) In this Part “residential premises” means—
  - (a) a dwelling;
  - (b) an HMO;
  - (c) unoccupied HMO accommodation;
  - (d) any common parts of a building containing one or more flats.

(5) In this Part—

“building containing one or more flats” does not include an HMO;

“common parts”, in relation to a building containing one or more flats, includes—

- (a) the structure and exterior of the building, and
- (b) common facilities provided (whether or not in the building) for persons who include the occupiers of one or more of the flats;

“dwelling” means a building or part of a building occupied or intended to be occupied as a separate dwelling;

“external common parts”, in relation to a building containing one or more flats, means common parts of the building which are outside it;

“flat” means a separate set of premises (whether or not on the same floor)—

- (a) which forms part of a building,
- (b) which is constructed or adapted for use for the purposes of a dwelling, and

- (c) either the whole or a material part of which lies above or below some other part of the building;

“HMO” means a house in multiple occupation as defined by sections 254 to 259, as they have effect for the purposes of this Part (that is, without the exclusions contained in Schedule 14);

“unoccupied HMO accommodation” means a building or part of a building constructed or adapted for use as a house in multiple occupation but for the time being either unoccupied or only occupied by persons who form a single household.

(6) In this Part any reference to a dwelling, an HMO or a building containing one or more flats includes (where the context permits) any yard, garden, outhouses and appurtenances belonging to, or usually enjoyed with, the dwelling, HMO or building (or any part of it).

(7) The following indicates how this Part applies to flats–

- (a) references to a dwelling or an HMO include a dwelling or HMO which is a flat (as defined by subsection (5)); and
- (b) subsection (6) applies in relation to such a dwelling or HMO as it applies in relation to other dwellings or HMOs (but it is not to be taken as referring to any common parts of the building containing the flat).

(8) This Part applies to unoccupied HMO accommodation as it applies to an HMO, and references to an HMO in subsections (6) and (7) and in the following provisions of this Part are to be read accordingly.

## **2 Meaning of “category 1 hazard” and “category 2 hazard”**

(1) In this Act–

“category 1 hazard” means a hazard of a prescribed description which falls within a prescribed band as a result of achieving, under a prescribed method for calculating the seriousness of hazards of that description, a numerical score of or above a prescribed amount;

“category 2 hazard” means a hazard of a prescribed description which falls within a prescribed band as a result of achieving, under a prescribed method for calculating the seriousness of hazards of that description, a numerical score below the minimum amount prescribed for a category 1 hazard of that description; and

“hazard” means any risk of harm to the health or safety of an actual or potential occupier of a dwelling or HMO which arises from a deficiency in the dwelling or HMO or in any building or land in the vicinity (whether the deficiency arises as a result of the construction of any building, an absence of maintenance or repair, or otherwise).

(2) In subsection (1)–

“prescribed” means prescribed by regulations made by the appropriate national authority (see section 261(1)); and

“prescribed band” means a band so prescribed for a category 1 hazard or a category 2 hazard, as the case may be.

(3) Regulations under this section may, in particular, prescribe a method for calculating the seriousness of hazards which takes into account both the likelihood of the harm occurring and the severity of the harm if it were to occur.

(4) In this section–

“building” includes part of a building;

“harm” includes temporary harm.

(5) In this Act “health” includes mental health.

**5 Category 1 hazards: general duty to take enforcement action**

(1) If a local housing authority consider that a category 1 hazard exists on any residential premises, they must take the appropriate enforcement action in relation to the hazard.

(2) In subsection (1) “the appropriate enforcement action” means whichever of the following courses of action is indicated by subsection (3) or (4)–

- (a) serving an improvement notice under section 11;
- (b) making a prohibition order under section 20;
- (c) serving a hazard awareness notice under section 28;
- (d) taking emergency remedial action under section 40;
- (e) making an emergency prohibition order under section 43;
- (f) making a demolition order under subsection (1) or (2) of section 265 of the Housing Act 1985 (c. 68);
- (g) declaring the area in which the premises concerned are situated to be a clearance area by virtue of section 289(2) of that Act.

(3) If only one course of action within subsection (2) is available to the authority in relation to the hazard, they must take that course of action.

(4) If two or more courses of action within subsection (2) are available to the authority in relation to the hazard, they must take the course of action which they consider to be the most appropriate of those available to them.

(5) The taking by the authority of a course of action within subsection (2) does not prevent subsection (1) from requiring them to take in relation to the same hazard–

- (a) either the same course of action again or another such course of action, if they consider that the action taken by them so far has not proved satisfactory, or
- (b) another such course of action, where the first course of action is that mentioned in subsection (2)(g) and their eventual decision under section 289(2F) of the Housing Act 1985 means that the premises concerned are not to be included in a clearance area.

(6) To determine whether a course of action mentioned in any of paragraphs (a) to (g) of subsection (2) is “available” to the authority in relation to the hazard, see the provision mentioned in that paragraph.

(7) Section 6 applies for the purposes of this section.

**20 Prohibition orders relating to category 1 hazards: duty of authority to make order**

(1) If–

- (a) the local housing authority are satisfied that a category 1 hazard exists on any residential premises, and
- (b) no management order is in force in relation to the premises under Chapter 1 or 2 of Part 4,

making a 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) A prohibition order under this section is an order imposing such prohibition or prohibitions on the use of any premises as is or are specified in the order in accordance with subsections (3) and (4) and section 22.

(3) The order may prohibit use of the following premises–

- (a) if the residential premises on which the hazard exists are a dwelling or HMO which is not a flat, it may prohibit use of the dwelling or HMO;
- (b) if those premises are one or more flats, it may prohibit use of the building containing the flat or flats (or any part of the building) or any external common parts;
- (c) if those premises are the common parts of a building containing one or more flats, it may prohibit use of the building (or any part of the building) or any external common parts.

Paragraphs (b) and (c) are subject to subsection (4).

(4) The notice may not, by virtue of subsection (3)(b) or (c), prohibit use of any part of the building or its external common parts that is not included in any residential premises on which the hazard exists, unless the authority are satisfied–

- (a) that the deficiency from which the hazard arises is situated there, and
- (b) that it is necessary for such use to be prohibited in order to protect the health or safety of any actual or potential occupiers of one or more of the flats.

(5) A prohibition order under this section may relate to more than one category 1 hazard on the same premises or in the same building containing one or more flats.

(6) The operation of a prohibition order under this section may be suspended in accordance with section 23.

## **SCHEDULE 2**

### **PROCEDURE AND APPEALS RELATING TO PROHIBITION ORDERS**

#### **PART 3**

#### **APPEALS RELATING TO PROHIBITION ORDERS**

##### *Appeal against prohibition order*

**7**

(1) A relevant person may appeal to the appropriate tribunal against a prohibition order.

(2) Paragraph 8 sets out a specific ground on which an appeal may be made under this paragraph, but it does not affect the generality of sub-paragraph (1).

**8**

(1) An appeal may be made by a person under paragraph 7 on the ground that one of the courses of action mentioned in sub-paragraph (2) is the best course of action in relation to the hazard in respect of which the order was made.

(2) The courses of action are–

- (a) serving an improvement notice under section 11 or 12 of this Act;
- (b) serving a hazard awareness notice under section 28 or 29 of this Act;
- (c) making a demolition order under section 265 of the Housing Act 1985 (c. 68).

##### *Appeal against decision relating to revocation or variation of prohibition order*

**9**



A relevant person may appeal to the appropriate tribunal against–

- (a) a decision by the local housing authority to vary a prohibition order, or
- (b) a decision by the authority to refuse to revoke or vary a prohibition order.

*Powers of tribunal on appeal under paragraph 7*

**11**

- (1) This paragraph applies to an appeal to the appropriate tribunal under paragraph 7.
- (2) The appeal–
  - (a) is to be by way of a re-hearing, but
  - (b) may be determined having regard to matters of which the authority were unaware.
- (3) The tribunal may by order confirm, quash or vary the prohibition order.
- (4) Paragraph 12 makes special provision in connection with the ground of appeal set out in paragraph 8.

**12**

- (1) This paragraph applies where the grounds of appeal consist of or include that set out in paragraph 8.
- (2) When deciding whether one of the courses of action mentioned in paragraph 8(2) is the best course of action in relation to a particular hazard, the tribunal must have regard to any guidance given to the local housing authority under section 9.
- (3) Sub-paragraph (4) applies where–
  - (a) an appeal under paragraph 7 is allowed against a prohibition order made in respect of a particular hazard; and
  - (b) the reason, or one of the reasons, for allowing the appeal is that one of the courses of action mentioned in paragraph 8(2) is the best course of action in relation to that hazard.
- (4) The tribunal must, if requested to do so by the appellant or the local housing authority, include in its decision a finding to that effect and identifying the course of action concerned.

*Powers of tribunal on appeal under paragraph 9*

**13**

- (1) This paragraph applies to an appeal to the appropriate tribunal under paragraph 9.
- (2) Paragraph 11(2) applies to such an appeal as it applies to an appeal under paragraph 7.
- (3) The tribunal may by order confirm, reverse or vary the decision of the local housing authority.
- (4) If the appeal is against a decision of the authority to refuse to revoke a prohibition order, the tribunal may make an order revoking the prohibition order as from a date specified in its order.

