



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

Case Reference : CHI/21UG/HPO/2019/0004

Property : Flat 1, 6 Sea Road, Bexhill on Sea, TN40
1ED

Applicant : Ms Lee Slatter

Representative : N/A

Respondent : Rother District Council

Representative : N/A

Type of Application : Appeal in respect of a Prohibition Order

Tribunal Member(s) : Judge JA Talbot
Mr BHR Simms FRICS

Date of Directions : 3 June 2019
Date of Consideration: 28 September 2019

Date of Decision: : 16 October 2019

DECISION

CHI/21UG/HPO/2019/0004

Flat 1, 6 Sea Road, Bexhill On Sea TN40 1ED

Background

1. The Tribunal has an appeal against a Prohibition Order issued by Rother District Council (“the Council”) under Sections 20 & 21 of the Housing Act 2004 (“the Act”) and dated 2 April 2019.
2. The property is named in the Order as First Floor Rear Studio, 6 Sea Road, Bexhill on Sea, East Sussex TN40 1ED.
3. The appeal to the Tribunal was received on 23 April 2019 and is made under paragraph 7(1) to Schedule 2 of the Act.
4. Directions were issued by Judge Wilson on 3 June 2019. Both parties complied with the Directions. The Tribunal was provided with a bundle of papers (un-numbered after page 31) containing the Prohibition Order, Ms Slatter’s Appeal form, the Council’s Statement of Reasons opposing the appeal along with supporting documentation including witness statements, photographs, the HRS hazard scores, and further evidence from Ms Slatter.
5. In accordance with the Directions, the application was determined on the papers without a hearing, as neither party objected or requested an oral hearing.

Inspection

6. The members of the Tribunal carried out an inspection of the property on 12 September 2019, accompanied by Miss Samantha Smith, Senior Environmental Housing Officer, and Ms Slatter, before considering the determination on the papers.
7. The subject premises are located on a shopping street and comprise ground floor retail premises with converted residential units on the upper floors. The building is three-story built of brick with a multi pitch tiled roof. Access is by the side of the shop premises to a porch addition leading to the common entrance to the upper floors. The building is generally in poor repair and decoration externally.
8. The property is on the first floor, at the rear of Flat 1. It is approached via the ground floor entrance porch which leads to the common hallway and staircase to a half landing. The room at the rear, which the Council calls the rear studio, is on the left with its own entrance door. The separate entrance door to Flat 1 is accessed from the right of the half landing up some further steps. On the next floor is Flat 2.

9. From the entrance door to the rear room there is a short passage with a cupboard containing an electricity consumer unit, and opposite, a shower cubicle, the floor of which is a shower tray, which also contains a low-level W.C. and a small hand basin. The passage then leads to the main room which has a bay window, and in one corner to the right of the doorway, a kitchen unit with a sink (hot and cold water from a water heater in the cupboard under the sink), a small worktop, a further cupboard and four drawers. The property has been recently redecorated and we were told that the bay window had also recently been repaired. The room was otherwise empty and not occupied.

Summary of Background Facts

10. Flat 1 is registered as one property at HM Land Registry with one leasehold title ESX141307. There is a note that only the first floor is included in the title. Ms Slatter became the registered proprietor on 15/02/2017.
11. Ms Slatter told the Tribunal that Flat 1 had previously belonged to her uncle, who had lived there for some time. She had helped him with various issues at the Flat and bought it from him when he wished to move out. She herself had never lived there. She provided estate agents particulars (presumably from her uncle's purchase), which describe the Flat as a "one bedroomed first floor flat which has the further benefit of a guest bedroom/storage room". In addition, the description is: "private entrance hall * living room * kitchen * double bedroom * bathroom * off communal entrance hall guest bedroom/storage room with WC".
12. It was apparent from the inspection (and implied by estate agent's particulars) that despite being registered as a single leasehold title, Flat 1 is not an integrated fully self-contained two-bedroom flat. In common with some other similar old-style conversions, Flat 1 is in two separate parts, separated by the half-landing on the communal staircase (which is also used to go up to the 2nd floor.) Therefore, to get from the front part of Flat 1 to the rear room, it is necessary to cross the communal half-landing. At the inspection, both the front part of Flat 1, which is believed to contain the main kitchen and bathroom, and the rear part, have their own separate doors with separate locks.
13. Miss S Smith, senior EHO for the Council first inspected Flat 1 on 16 December 2016 when Ms Slatter's uncle made a complaint about fumes and deposits from the retail premises below (a fast food outlet). At that time, the uncle occupied the self-contained one-bedroom front part of the Flat. The rear room was being used for storage and there was an old toilet in what is now the shower cubicle (this is consistent with the estate agent's description).
14. After purchasing the Flat, during 2017, Ms Slatter carried out some adaptations to the rear room, by replacing the old toilet, adding the

shower and hand basin, and installing the kitchen unit, thereby creating accommodation capable of being let as a self-contained unit. She did not apply for planning permission or building regulations consent for these changes.

15. Ms Slatter let the self-contained front part of Flat 1 to a tenant, Mr Craig Barker, under a tenancy agreement, and she let the self-contained rear part to a couple, Mr Robbie Green and Miss Jessica Hurst, under a separate tenancy agreement.
16. Mr Green and Miss Hurst moved in in August 2018, paying rent of £400 pcm to Ms Slatter, and £50 each month to Mr Barker to cover costs of their electricity usage and as a contribution towards council tax. This was because the electricity meter was located in the front flat and Mr Cooper was liable for council tax for the whole of Flat 1. They did not share any facilities such as kitchen, bathroom or living room.
17. Miss Smith inspected the property again on 16 January 2019, following an internal referral from a Community Protection Officer, Mr Hampson, who was investigating a noise complaint. He was concerned that the rear room was uninhabitable due to its small size. At that time, it was found that Mr Barker was occupying the front part of Flat 1 and Mr Green and Miss Hurst were occupying the rear part, both as self-contained units.
18. On 18 January 2019, the rear part of Flat 1 was deemed to be a self-contained dwelling for the purpose of council tax and given a banding by the Valuation Agency following an inspection by a Revenues Visiting Officer, Mr J White. It was designated as Flat 1a. A Planning Enforcement Officer, Mr D Bevan, visited the property on 23 January 2019. From its use, layout and amenities he also deemed it to be a self-contained dwelling. Building Control Surveyor Ms S Simpson subsequently contacted Ms Slatter to advise that a regularisation application was required for the creation of the self-contained unit.
19. Miss Smith carried out a hazard assessment under the Housing Health & Safety Rating System (HHSRS) and identified a category 1 hazard no.11 Crowding and Space, and category 2 hazards no.16, Food Safety, No.28 Position and Operation of Amenities, and no.29, Structural Collapse and Falling Elements. On 7 March 2019 she informed Ms Slatter that the Council intended to serve a Prohibition Order as the studio (the term used by the Council) was too small to be a self-contained dwelling.
20. On 2 April 2019 the Prohibition Order was served on Ms Slatter. The prohibition was that the first-floor rear studio room was not to be used for human habitation due to the size of the room being insufficient for the purpose of sleeping, living and cooking. The room was permitted to be used for storage only.

21. The remedial action which would result in the Council revoking the Order, in summary, was to remove the kitchen facilities, toilet, wash hand basin and shower, all water supplies and pipes, and repair the bay window by replacing rotten timbers and cracked glazing.
22. It was evident from the inspection that by 12 September 2019 the bay window had been repaired and redecorated but the kitchen unit, shower cubicle and W.C. were still in situ.
23. Meanwhile, in February 2019, Mrs S Bishop, a Housing Needs Officer at the Council, was advising a Mr Joe Cooper who had applied for housing assistance as he was about to become homeless. Mr Cooper sent to Ms Bishop an Assured Shorthold Tenancy agreement for “Flat 1”, 6 Sea Road. The landlord was Ms Slatter. The letting was for a term of 6 months from 28 February 2019 at a rent of £450. An earlier figure of £500 had been crossed out and initialled by Ms Slatter. Mr Cooper also sent an undated invoice from Ms Slatter addressed to the Council for £400 rent in advance and £400 deposit, totalling £800.
24. Mr Cooper confirmed to Mrs Bishop that the proposed tenancy was for the self-contained rear room. Mr Barker told the Council that he had a tenancy agreement for the front self-contained part at a rent of £650. There had apparently been some discussion between Ms Slatter, Mr Cooper, and Mr Barker about whether they would share the whole of Flat 1. In the event, however, it would appear Mr Cooper did not move in. He did not contact the Council again after being told that if he was flat sharing he would only be eligible for the shared room rate of Universal Credit housing costs. Mr Green and Miss Hurst moved out of the rear unit at the end of March 2019. It has not been occupied since then.

Ms Slatter’s grounds of appeal and the Council’s response

25. Ms Slatter argued that the property was not a studio room but was an integral part of Flat 1 with en-suite facilities. She denied that the room contained kitchen facilities but stated it had a sink and an area to boil a kettle. She stated that it was never her intention to let the room as a separate dwelling, and that she only intended to let it a two-bedroom flat share to two tenants with separate tenancy agreements who would share facilities. She had not applied to building control for the en-suite as it was already there. She described the shower cubicle as a wet-room.
26. The Council objected to all these grounds. Its main argument was that the rear room, or studio, was a self-contained dwelling which had been separately let and occupied by Mr Green and Miss Hurst. It had been inspected by four Council officers from different departments who took that view. The first-floor front flat was also self-contained and separately let to Mr Barker.
27. The Council submitted that kitchen facilities existed at the time of the inspection which the tenants were using for the storage, preparation

and cooking of food. There was photographic evidence of washed-up utensils, equipment, crockery and cutlery on the sink drainer. The tenants had installed a fridge and a two-ring cooker plate. Dry food was being stored on top of the fridge.

28. The Council further submitted that the shower cubicle was too small, the floor being a shower tray, with a small hand basin which could only be reached by leaning across the toilet or pressing up against the wall. These inadequate sanitary and washing facilities could not be dismissed as a wet room. There was previously no shower but only a toilet. The electrical sockets in the main room were hard to access.
29. The Council submitted that it was clear the rear room had been let as a separate dwelling to the tenants who were in occupation on 19 January 2019, and that in emails to the Council Ms Slatter had variously described the rear room as a bedsit or a flat. The evidence from the Council's Housing Needs officer showed it was Ms Slatter's intention to re-let the property to Mr Cooper, also as a separate dwelling under an assured shorthold tenancy. The rent sought was consistent with this.
30. The Council did not object to the whole of Flat 1 being occupied as a flat share, provided the rear room was used as only as a bedroom, without the kitchen unit, shower cubicle and W.C.
31. On the question of Building Regulations, Ms Slatter submitted all the electrical and plumbing works were in compliance. The Council objected. She had not made a Building Regulations application, which was required for the installation of the sink and shower, electrical installation and drainage system.
32. In relation to the identified hazards, category 1 no.11, Crowding and Space, Ms Slatter appeared to accept that the rear room was too small for living, sleeping and cooking. Her objection was therefore unclear.
33. The Council argued that despite this Ms Slatter had in fact let the rear room as a self-contained unit. The room was too small because its total floor area was 7.03 square metres. The kitchen unit took up floor space, restricting the available space for sleeping and storage. At the time of the inspection a double futon covered most of the floor. Without the removal of the kitchen unit, the floor area would be less than the statutory minimum of 6.5 square metres for a single bedroom under the space standard (s524 Housing Act 1985) and relevant regulations governing the licensing of homes in multiple occupation.
34. In relation to the category 2 hazards, Ms Slatter stated there were no facilities in the bedroom for food storage, cooking or preparation and that there were adequate power sockets for a bedroom. The Council's response is at para.27 above.
35. Ms Slatter disagreed with the description of the condition of the bay window but stated that in any event this was due to be replaced.

36. Finally, Ms Slatter considered that the Prohibition Notice was unreasonably severe and that none of the remedial works were necessary apart from the window. She contended that the Council should have met with her on site to negotiate and agree for the second bedroom “to remain as it always has”.

Consideration

37. Section 20 of the Housing Act 2004 permits a local housing authority which is satisfied that either a Category 1 or Category 2 hazard exists in any residential premises to serve a Prohibition Order.

38. Insofar as is relevant to this Appeal, Section 1(4)(a) provides that “residential premises” means “a dwelling”. The word “dwelling” is further defined as “a building or part of a building occupied or intended to be occupied as a separate dwelling”.

39. The first issue for the Tribunal to decide, therefore, was whether the rear room of Flat 1 was a separate dwelling. The Council referred to the room as a studio flat, which in common usage is used to describe self-contained accommodation with a living area, kitchen and bedroom combined into a single room. Ms Slatter has variously described the room as a bedsit and even a flat, but throughout the Appeal referred to it as “the second bedroom of Flat 1”.

40. The Tribunal had no difficulty in concluding that the rear room had been adapted by Ms Slatter during 2017 into a unit of self-contained accommodation with a kitchen unit in the main room and a separate shower cubicle with W.C. and hand basin. To avoid using the term “studio” or “second bedroom”, the term “self-contained unit” will be used in this Decision.

41. It was obvious to the Tribunal from the inspection that these facilities were still in situ and that the self-contained unit was capable of being let and occupied as a separate dwelling. It was also clear from its position across the half-landing from the self-contained front part of the Flat that the self-contained unit it could be separately accessed and had its own front door with a lock. Further, the self-contained unit became separately valued for council tax purposes.

42. The Tribunal accepted the Council’s evidence, in both its written submissions, witness statements and photographs, that the self-contained unit had been let by Ms Slatter to Mr Green and Miss Robson as a separate self-contained dwelling, and was occupied by them until the end of March 2019, just days before the service of the Order.

43. The next question is whether the self-contained unit was intended to be occupied as a separate dwelling. On this point, the Tribunal accepted the Council’s evidence that Ms Slatter had intended to let the self-contained unit to Mr Cooper, also as a separate dwelling, on a separate

assured shorthold tenancy, at a rent commensurate with a studio flat or bedsitter rather than as a flat share. Mr Barker still had a separate tenancy of the self-contained one-bedroom unit at the front. This did not support Ms Slatter's contention that the whole of Flat 1 was to be a flat share and the Tribunal did not accept that the rear room was realistically intended to be used as the "second bedroom".

44. Turning to the Category 1 and Category 2 hazards, the Tribunal agreed with the Council's assessment and scores under the HHSRS system. It was again obvious from the inspection and the Council's measurements that the size of the room was completely inadequate and unsuitable to be used for living, sleeping and cooking.
45. It was equally clear that the kitchen unit was more than simply a place to boil a kettle and had been used by the tenants for the storage, preparation and cooking of food, and that these facilities were inadequate. The Food Safety Category 2 hazard was accepted.
46. For the reasons given by the Council, the Tribunal also accepted that the Category 2 hazard of Position and Operability of Amenities was correct, both in respect of the electrical sockets and particularly the shower cubicle which was totally inadequate.
47. From the photographs supplied by the Council, it was clear that at the material time the bay window was in a poor state of repair and that the glazing was cracked and held in at one corner by masking tape and so was at risk of falling out. Although Ms Slatter objected to the Category 2 hazard of Structural Collapse and Falling Elements as an over-reaction, she did appear to accept that the window needed repair and had in fact carried this out by the time of the Tribunal's inspection. The Tribunal therefore agreed that this hazard was correct.
48. The terms of the Prohibition Order are that unless and until the kitchen unit, shower facilities, W.C. and attendant water and electrical supplies are removed, the room is permitted to be used for storage only. The Council has stated that it would not object to Ms Slatter renting the whole of Flat 1 as a two-bedroom flat with the contested room being used for sleeping only (albeit not contained all behind one door). Ms Slatter has not removed these facilities so the restriction, which the Tribunal accepts as reasonable, applies.

Decision

49. The Tribunal has the power to confirm, quash or vary the Order. In light of all the findings, conclusions and reasons above, the Tribunal's decision is to confirm the Prohibition Order dated 2 April 2019.
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RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking