



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

Case Reference : **LON/00AT/HPO/2018/0011**

Property : **Basement Flat, 173 Thornbury
Road, Isleworth, TW7 4QG**

Applicant/Appellant : **Osterley Property Investments Ltd**

Representative : **Ms Harjit Rai**

Respondent : **The London Borough of Hounslow**

Representative : **Mr. Sukh Bains, Housing
Enforcement Officer & Ms Anna
Nawzad, Principal Housing Officer**

Type of Application : **Appeal against a prohibition order**

Tribunal Members : **Judge Tagliavini
Mr. P Roberts DipArch RIBA**

**Date and venue of
hearing** : **10 Alfred Place, London WC1E 7LR
1 November 2018**

Date of decision : **15 November 2018**

DECISION

The tribunal's decision:

The tribunal determines that the appeal fails and the prohibition order dated 11 July 2018 is to take effect in accordance within 'the operative time' as specified for the purposes of section 24(5) of the Housing Act 2004.

The application

1. This is an appeal made by the Appellant landlord pursuant to section 20 and 21 of the Housing Act 2004 ("the 2004 Act") seeking to quash the Prohibition Order dated 11 July 2018 made by the Respondent local authority prohibiting the use of the subject property, a basement flat, for residential use.

The background

2. The subject property comprises a basement flat ("the flat"), used originally as store rooms and located below commercial premises with a further flat let on a long lease on the first floor above. Currently, the flat is let by the landlord as a two bedroom property, with living room, kitchen and bathroom and occupied by two adults and two minors (male 16 years and a female aged 10) at a rent of £1100 per calendar month.
3. After a complaint made to the respondent local authority, a planned inspection was notified to the landlord and carried out of the flat on 9 May 2018 under the provisions of section 239 of the Act. On inspection a number of Category 1 and Category 2 hazards were identified. The Category 1 hazards comprised of the absence of adequate natural light and windows and a lack of space causing crowding due the lack of an adequate number of, or appropriately sited bedrooms. The Category 2 hazards identified were due to inadequate ventilation provision and the lack of fire safety partitioning throughout the flat. Works to remedy the Category 1 hazards were identified by the Respondent as the construction and design of residential premises that provide suitable amounts of natural light and reasonable views and the reduction of the number of persons occupying the premises to 2 persons. Works to remedy the Category 2 hazards were identified as the provision for cooling the temperature within the flat during hot weather and making provision for ventilation by the installation of suitable sized windows.

The inspection

4. Before the hearing of the appeal the tribunal carried out an inspection of the premises. The tribunal found the premises dark with either small windows at high level in the rooms or with no windows at all. The 2 bedrooms led directly off the living room area with little or no natural light or ventilation and were small in size.

The hearing

The respondent's case:

5. For the hearing the tribunal was provided with a separate bundle of documents from each of the parties. As the appeal was by way of a rehearing the tribunal heard first from Mr. Bains from the London Borough of Hounslow and the officer responsible for serving the prohibition order and who opposed the appeal. Mr. Bains spoke to a Statement opposing the appeal and explained to the tribunal that during his inspection of the flat he had taken measurements of the rooms and photographs of the flat throughout. He had used these to generate a computer calculated schedule of hazards in accordance with the Housing health and safety rating system (HHSRS) guidance.
6. The tribunal was informed that no planning application for the conversion of the original basement stores rooms into a residential unit had ever been made or received and the only planning application received in August 2012 had concerned the extension of the basement storage area and rear roof extension to create habitable space on the upper floor. Mr. Bains stated he had re-inspected the flat on 24 August 2018 and could see that some work had been carried out, including installing fire proof plaster board to the kitchen ceiling and encasing the boiler, as well as hard wired smoke alarms in each bedroom.
7. Mr. Bains acknowledged the work carried out by the landlord but stated this was insufficient to alleviate the Category 1 hazards of a lack of natural light and ventilation. As the remedy for these required extensive works which could not be done with the tenants in occupation, Mr. Bains stated there was no alternative to a Prohibition Order which, would remedy the Category 1 hazards he had identified.

The appellant's case:

8. Ms Rai told the tribunal that the reason for the appeal was due to the basement flat having been in existence since the late 1800's, when the property was built and that council tax had been charged separately for the flat. Ms Rai asserted that the flat meets all building and fire regulations, plaster board partitions having recently been installed. The tenancy had been let to two adults and she had been unaware two minor children had joined them.
9. Ms Rai told the tribunal that the landlord (a family business), had acquired the property in 2012 and at a time when the basement was being used for residential purposes.
9. Ms Rai told the tribunal that she relied on the Fire Safety Report of Mr. D Youngs of Emlea Property Services & Building Maintenance dated 19 August 2018. This report showed that a fire hazard had been reduced

to trivial or minimal as a result of the fire proofing works carried out by the landlord to the flat.

10. Ms Rai told the tribunal that she had not realised the landlord was required to address the problems of natural light and ventilation and had instead concentrated upon remedying the fire hazards identified. Ms Rai stated that Mr. Bains had not told the landlords of the works needed to remedy the Category 1 hazards but accepted that she had not read the Schedules accompanying the Prohibition Order fully, which set out the works required to make the flat habitable for residential purposes.

The tribunal's decision and reasons:

11. The tribunal is satisfied that on the balance of probabilities that the flat in its current state should not be used for residential purposes. The tribunal finds that historically, this flat was designed for storage purposes only and has been converted to residential use without any planning application having been granted or satisfying the relevant Building Regulations. Further, the tribunal is satisfied that Mr. Bains has correctly identified both Category 1 and Category 2 hazards as specified on the Notice and accompanying Schedules. The tribunal finds that the flat lacks adequate natural light, ventilation and space and accepts the respondent's assertions that these are defects which can only be remedied by substantial works while empty of occupants. Consequently, the tribunal finds that the service of the Prohibition Notice is the most appropriate and effective method of securing this outcome.
12. The tribunal notes Ms Rai's willingness to work with the Council and carry out all necessary works to render the property habitable. The tribunal finds that these works were clearly notified to her at an early stage but that Ms Rai had not read the Schedules of works fully and had failed to appreciate the extent of the works required by the respondent.
13. In conclusion, the tribunal is satisfied that the Prohibition Notice is the most suitable method of dealing with this flat in its current state and therefore refuses the appeal and confirms the Prohibition Order dated 11 July 2018.

Signed: Judge Tagliavini

Dated: 15 November 2018