



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

Case Reference : **MAN/00DA/HPO/2018/0003**

Property : **Flats 1, 4 and 5, 151 Stratford Street,
Leeds LS11 7EQ**

Applicant : **Mrs Maria Toumazi**

Respondent : **Leeds City Council**

Type of Application : **Housing Act 2004 (the “Act”) – Schedule
2 paragraph 7(1) Prohibition Order**

Tribunal Members : **A M Davies, LLB
J Jacobs, MRICS**

Date of Determination : **11 October 2018**

Date of Determination : **19 October 2018**

DECISION

DECISION

The Prohibition Orders dated 8 March 2018 served on the Applicant by the Respondent in respect of Flats 1, 4 and 5 Stratford Street, Leeds are confirmed.

REASONS

BACKGROUND

1. Mrs Toumazi has owned 151 Stratford Street, Leeds since early 2013. Originally a 4 bedroomed home on three floors with a basement, it has been converted, without planning permission, into 5 self-contained flats on three floors, with storage space in the basement for use by the Landlord.
2. In November 2017 a representative of the Respondent visited the property for a purpose unrelated to this appeal. Having noted the sizes of the flats he requested a visit by Mr Winspear, a Principal Housing Officer. Mr Winspear inspected the property on 7 February with a colleague and measured each flat.

PROHIBITION ORDERS

3. It transpired that no planning enforcement action was available due to the length of time since the property was converted into flats. Mr Winspear carried out an assessment in accordance with the Housing Health and Safety Rating System (England) Regulations 2005 (HHSRS), and identified a category 1 Crowding and Space Hazard, band A. On 8 March he issued a Prohibition Notice relating to each occupied flat, ie Flat 1 on the front ground floor, Flat 4 at the rear of the first floor and Flat 5 on the second floor (front and rear attics). In each case the Order was to take effect on 8 June 2018, to allow time to re-house the tenants.
4. Each Prohibition Order indicated that proposals for remedial action, which would also require planning permission, could include re-conversion of the property to a single dwelling or incorporation of each flat into a larger flat within the property.

THE APPLICATION

5. On 4 April 2018 the Applicant filed this appeal against the Prohibition Orders, under paragraph 7 of Part 3, Schedule 2 to the Housing Act 2004 ("the Act").
6. The parties prepared hearing bundles as directed. The Respondent's documents included a report by Ms Julia Park BSc, BArch, RIBA who is a specialist in housing standards.

7. At the hearing, the Respondent was represented by Ms Phillipson of Counsel. The Applicant was represented by her husband Mr Toumazi, who had expected his solicitor and architect to be present. When they did not arrive for the inspection or the hearing, Mr Toumazi indicated that he was willing to make representations to the Tribunal himself. The statements of the parties and their supporting documents were taken as read.

THE INSPECTION

8. On 11 October 2018 the Tribunal inspected each of the three subject flats in the presence of counsel, Mr Winspear and a representative of the Respondent's planning department, and Mr Toumazi.
9. 151 Stratford Street is a terraced early 19th century property with a small yard to the front, on a quiet cul-de-sac some 2 miles from Leeds city centre. The common parts are cramped but clean; the stairs and landing are carpeted.
10. Each of the flats is currently occupied but none of the tenants was present at the time of the inspection. Each is a self-contained single-occupation flat with heating, fuse box, fire and smoke alarms, a rudimentary kitchen, and a bathroom containing a shower. The two lower flats have wood or wood-effect flooring, and flat 5 is carpeted.
11. Flat 1 is the original living room of the house, with a bay window. The gross measurement taken by Mr Winspear is 15.2m² and the useable space measures 10.89m². The Applicant's architects measured this room at 12.2m². The cooking area comprises a single drainer sink unit with cupboard below and above, a two-ring hob with a fridge below it, and two wall shelves available for siting a microwave oven and kettle.
12. Flat 4, which was originally a bedroom, has a similar kitchen area and some additional shelving in the bathroom, which is over the stairwell. There are two good-sized windows to the room. The gross measurement taken by Mr Winspear is 16.4m² and the useable space measures 9.25m². The Applicant's architects measured this room at 13.7m².
13. Flat 5 consists of a small lobby at the foot of the stairs, the staircase, a small landing at the top, and the front and rear attic rooms with limited headspace, especially in the bedroom to the front. The bathroom is particularly small. There is an entry-phone by which the front door can be opened to visitors. The kitchen area includes a cooker with 4 hobs. The gross measurement taken by Mr Winspear is 20.8m² and the useable space as he assesses it measures 15.69m². The Applicant's architects measured the space in this flat that had a height of at least 1.5m at 20.18².

THE LAW

14. Paragraphs 7 and 10 of Schedule 3 to the Act provide that a person served with a prohibition order may appeal against it to this Tribunal within 28 days after service. Paragraph 11 of the Schedule provides that the appeal is to be by way of re-hearing and may be determined having regard to matters of which the Respondent was unaware. The tribunal may confirm, quash or vary the prohibition order.
15. A housing authority on becoming aware of a hazard in residential premises has a duty to assess the nature of the hazard and the severity of any possible effect on the health of anyone likely to use the premises. If the assessment results in a Hazard Score within bands A, B or C the local authority is required to take action, and one of the options available is an order prohibiting use of the premises. An assessment of the risk must be made according to guidelines and calculations set out in the HHSRS. Insofar as the assessment involves an element of subjective judgement on the part of the inspector, he is required to have regard to guidance from more recent sources, such as the local authority's own housing policies, the Housing Standards Handbook of the National Housing Federation, the Metric Handbook – Planning and Design Data, and the 2015 Nationally Described Space Standard.
16. The aim of the HHSRS is that a dwelling
“should be able to supply the basic needs for the everyday life of the range of households who could normally be expected to live in a dwelling of that size and type.”

Section 11 of the HHSRS hazard profiles states that a dwelling should provide for the psychological needs of its occupier(s) for (among other things) social interaction, and
“sufficient space for the separation of different household activities, either by physical separation or by a clearly defined space within a larger space”

to avoid increased risk of
“psychological distress and mental disorders”

and to ensure that
“residential premises ... provide a safe and healthy environment for any potential occupier or visitor.”
17. Matters identified in the HHSRS as being relevant to the likelihood and the potential severity of illness arising from lack of space include (insofar as relevant to this property)
*lack of living area of an adequate size for the household
lack of a separate kitchen area of adequate size....
inadequate size of bedrooms.*

THE RESPONDENT'S CASE

18. In his witness statement and at the hearing, Mr Winspear explained the methods and the guidance he had employed to evaluate the flats. He had concluded that there was a one in 18 risk that over a period of a year a resident would seek medical assistance to treat psychological harm caused by the cramped conditions in which he or she was living. This gave a risk score of 6650, any score above 1000 being a category 1 hazard justifying a prohibition order if no other enforcement action was appropriate.
19. Mr Winspear's view was that there was no means of creating sufficient space within the flats to alleviate the risk of injury, and therefore that an improvement notice was not appropriate. He had not received any proposal from the Applicant for re-configuration of the 3 subject flats so as to create adequate living conditions.
20. For the Respondent Ms Phillipson stressed that these flats were not equivalent to temporary accommodation, or, for example, student lodgings which were not required to hold the whole of the tenant's possessions. The subject flats were the tenants' only and permanent homes and should be able to meet all the requirements of a normal home.

THE APPLICANT'S CASE

21. Mr Toumazi made two points to the Tribunal. The first was that the Respondent had incorrectly measured the rooms. Two architects employed by the Respondent had found the useable space in the rooms to be appreciably larger than the areas measured by Mr Winspear. Mr Toumazi argued that the size of the flats exceeded "*the minimum size requirement of 6.52 m² for a one bed roomed sitting room.*"
22. Mr Toumazi's second point was that improvement notices would have been a more appropriate enforcement tool than the Prohibition Orders. He told the Tribunal that he could reconfigure the property so as to create three flats, each with sufficient living space for a single tenant. He had submitted a pre-planning application to the Respondent in 2017. This proposal was for three two-storey maisonettes in the property, and included bedrooms in the basement. The Respondent had informed him that the proposal was unlikely to be acceptable because of intensification of dwellings in the area, the current permitted use being as a single household. The Tribunal notes that the Respondent's advice as regards the first/second floor maisonette was based on a supposed floor space of 35.6 m². This appears to be the size of the first floor alone; the total size of this maisonette according to the plans submitted is given as 62.6 m². Whilst the Local Planning Authority may consider that three two-storey maisonettes of 37.6 m², 38.3 m² and 62.6 m² are unacceptable, the Tribunal notes that an error as to the size of the first/second floor maisonette may have affected the advice given.

FINDINGS

23. The Tribunal found it unnecessary to establish the actual size of the useable space in the rooms. The guidelines in this regard are currently unclear and the Respondent has not adopted a local policy on room size for single occupancy flats. Mr Toumazi's reference to a minimum size requirement of 6.52 m² is based on a misreading of the Housing Act 1985, which applies that minimum only to the sleeping area. By any standards, the subject flats are cramped and inadequate to fulfil the function of permanent homes; ie to contain all the tenant's possessions and to meet all of his or her social needs. The spaces for different activities - dressing, cooking, eating, sleeping, laundry, storing possessions, recreation, entertainment of guests - were either lacking or woefully inadequate and overlapping.
24. The Tribunal accepts the presence of a band A Category 1 space hazard in each of the flats, justifying the Prohibition Orders.
25. Prior to the hearing in these proceedings, the Applicant had not put forward any further proposal for improving the flats, although she had indicated a willingness to improve their "*general nature and orderliness*". The Tribunal is obliged to make an order in respect of properties as inspected on the day of the hearing, and concludes that improvement notices were not available as an option for the Respondent, since nothing could be done to ameliorate the hazard within the current configuration of the flats in the property.
26. The Prohibition Orders are therefore confirmed.

Judge A Davies

19 October 2018