

Y TRIBIWNLYS EIDDO PRESWYL

RESIDENTIAL PROPERTY TRIBUNAL (WALES)

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Reference: RPT/0014/10/17

Property: Flat 2, 58 Queen Street, Queensferry, CH5 1TB

Applicant: Mr Brian A McGee

Respondent: Flintshire County Council

COMMITTEE: Chairman Jack Rostron
Surveyor Tom Daulby
Lay Member Bill Brereton

APPEARANCES FOR APPLICANT: Mr Brian A McGee

APPEARANCES FOR RESPONDENT: Mr Aidan J Kelly, Environmental Health Officer
Mrs Jennifer H Prendergast, Environmental Health
Manager

REASONS AND DECISION OF RESIDENTIAL PROPERTY TRIBUNAL

1. This is an appeal by the landlord Mr Brian A McGee (the Applicant) against a Notice of a Prohibition Order (the Notice) dated 8th September 2017 which was served along with remedial works required by Flintshire County Council (the Respondent) in respect of the property known as Flat 2, 58 Queen Street, Queensferry, Deeside, CH5 1TB (the Property).
2. The subject Property consists a ground floor flat declared in 2007 by the Respondent as a House in Multiple Occupation, and suitable for occupation by 5 people in total. The Respondent also declared in 2016 the whole of 58 Queen Street, Queensferry to consists of 5 self-contained residential units in a Certificate of Lawfulness issued under section 191 of the Town and Country Planning Act 1990. The Property which is the subject of the Prohibition Order consists of a bedsitting room of approximately 10.31 sq. metres [including the chimney breast], a kitchen of approximately 2.25 square metres, and bathroom/WC. The Tribunal felt the Property could be considered as one room and therefore marginally smaller than the 13.00 metres recommended by the Respondent. The spandrel (enclosed space under the stairs) could also be included but was not measured at the time.

3. The Respondent gave notice that they were satisfied that category 1 and category 2 hazards exist at the Property and that no management order was in force in relation to Chapter 1 or 2 of the Housing Act 2004 [the Act]. They also carried out application of the Housing Health and Safety Rating System (HHSRS) which they felt resulted in the hazards being identified. The authority therefore made a Prohibition Order under section 21(5) the operative date being 6th October 2017 and specified the remedial action which they considered would, if taken in relation to the hazard, result in them revoking the order under section 25 of the Act.
4. The category 1 hazards relate to; excess cold; crowding and space; and food safety. The category 2 hazards relate to; domestic hygiene pests and refuse; personal hygiene sanitation and drainage; electrical hazards; and fire.
5. The Applicant appealed to this Tribunal.
6. The Tribunal inspected the Property on 13 March 2018 and was accompanied by the Applicant. The Respondent was aware of but did not attend the inspection.
7. The Applicant presented very limited written evidence or statement of case which is contained in the application form and in summary is as follows: -

“The prohibition order is factually incorrect – I have been given conflicting information from them and they are the cause of several hazards and there are other options than the ones they say. I have recently been awarded a certificate of lawfulness.”
8. The hearing was held on the 13 March 2018. It was attended by the Applicant in person and by Mr Aidan Kelley and Mrs Jennifer Prendergast for the Respondent. Following a review of each hazard the Respondent agreed to revoke all hazards apart from those relating to electrical hazards and fire hazards which are both category 2.
9. The Act introduced the Housing Health and Safety Rating System (“HHSRS”). This is a system for assessing housing conditions, enabling local authorities to assess the condition of a property based on risk to occupants, with power to serve notices and orders on owners requiring action to be taken to reduce risk or restrict the use of a Property.
10. The most serious risk of harm creates a category 1 hazard in respect of which it is mandatory under section 5(1) for the local authority to take appropriate enforcement action. All other risks enable the local authority, in its discretion, to take particular kinds of enforcement action. Section 5(2) sets out seven types of action which are “appropriate” for a category 1 hazard. If two or more of these courses of action are available, the authority must take the course which they consider to be the most appropriate. Sections 20 and 21 empower the local authority to make a Prohibition Order if a category 1 or category 2 hazard is found at the Property. Such an order prohibits the use of the Property for certain purposes.

11. Section 27 states that Schedule 2 which deals with the service of Prohibition Orders and Notices relating to their revocation and variation, and with related appeals, has effect. A person served with a Prohibition Order can appeal to a Residential Property Tribunal.
12. In exercising its functions under the HHSRS provisions a local authority must have regard to any guidance for the time being given by the appropriate national authority – section 9 (2). There are two main sets of such guidance in relation to the HHSRS: The Operating Guidance and the Enforcement Guidance.
13. Following withdrawal by the Respondent of all requirements of the Prohibition Order save for electrical and fire hazards the Tribunal decided that the following remedial actions were appropriate and needed to be carried out within 28 days of the date of service of this decision.
14. Regarding electrical hazards that the Applicant should;
 - 14.1 Provide two additional 13 amp double switched socket outlets to the bed/living room located in an appropriate position within the room.
 - 14.2 Carry out and test of the electrical system in order to check safety and identify any faults and deficiencies. Record details in a report such as the NICEIC Domestic Installation Periodic Inspection Report form. Carry out all work identified as necessary in the report so as to leave the electrical system and installation in sound and safe working order.
 - 14.3 All electrical work must be carried out by a person or company who is a member of an appropriate competent person scheme.
15. Regarding Fire hazards that the Applicant should:
 - 15.1 Isolate the Grade A fire detection and warning system, light fitting and associated wiring and prepare the circuits for re-installation into a new ceiling.
 - 15.2 Provide and fit half hour fire resistance ceiling using 12.5 mm thick plasterboard appropriately fixed. Plasterboard joints must be skimmed and the boarding skimmed with the 5 mm gypsum plaster finish coat, brought to a smooth finish and matching it with adjoining plaster services.
 - 15.3 Provide and fix grade D/LD3 interlinked mains wired smoke alarms (with battery backup) to the ground floor hallway, first floor landing areas and second-floor landing areas. All alarms must be linked together such that if one sensor is triggered, all sensors will go to alarm state to give the occupiers adequate warning.
 - 15.4 Carry out works in the fire door to Flat 2 to ensure it meets the following requirements;

- All doors required to be fire resisting shall be designed, constructed and installed and maintained in accordance with British Standard 8214 Code of Practice for fire door assemblies with non-metallic leaves.
- Where new fire doorsets or maintenance of fire doors is required, specialist joiners with a working knowledge of this standard should be employed in order to ensure appropriate standards are achieved.
- All doors require to be fire resisting, shall be well fitting within their respective frames. In each case, gaps between door and frame must not exceed 4 mm. In cases where out of level floors would prevent opening, the doors may be cut short provided that a suitable hardwood threshold securely fixed under the full width and thickness of the door.
- The threshold must be sufficiently broad and chamfered (smooth rounded edge) so as to prevent them causing a tripping hazard.
- All doors required to be fire resisting shall be fitted with self-closing devices adjusted so as to fully and positively close the door. NOTE - rising butt hinges, helical spring closers and closers which may be readily de-connected are unacceptable.
- All doors required to be fire resisting shall be fitted with furniture including hinges having a melting point of not less than 800°C. There shall be no gaps between the frame and the stop, nor shall any part of the stop be cut away from the fitting of locks, etc.
- All doors require to be fire resisting shall be hung on three 100 mm pressed steel butt hinges.
- All fastenings to doors required for escape purposes shall be thumb turn type locks. Fastenings shall be easily operable without the use of the key.
- Openings such as spy holes, etc are not permitted in fire doors unless appropriately treated with an intumescent material. Letter plates are not permitted in fire doors unless appropriately treated with intumescent material. Alternatively, they shall be designed in accordance with BS 8214 Code of Practice for fire door assemblies with non-metallic leaves.
- Any letter plate shall be installed between 800 mm and 1000 mm above the threshold with the maximum aperture size of 250 mm x 38 mm complying with BS2911, having well-fitting sprung gravity internal and external flaps manufactured from materials such as steel, stainless steel and some brasses.
- Letter plates with larger apertures must not be used. All architraves to fire doors shall be removed and the void between the wall/partition and door lining infilled with plaster or intumescent paste.
- Architraves to be re-fixed, renewing were necessary.
- All locks to existing fire doors shall be removed and the cavity injected with intumescent paste before fitting of the lock.
- All locks to new fire doors shall be intumescent paste injected into the lock cavity before fitting of a lock.
- Half hour fire doors; the door frame shall be fitted with an intumescent heat seal and cold smoke seals on the hinge, lock and head edges of the door.
- One-hour fire doors; the door frame shall be fitted with staggered intumescent heat seals. Cold smoke seals shall be fitted on the hinge, lock and head edges of the door.

- The frame rebates are to be 25 mm depth worked from the solid wood or glued and screwed at maximum 600 mm centres

15.5 Ensure the spandrel underside of the stairs, located in Flat 2 is 30 minutes fire resistant by repairing all minor holes to the plaster work. Alternatively, under draw the spandrel using 12.5mm plasterboard, with skimmed joints and skimmed with 5mm plaster finish, flush with all adjacent plasterwork areas.

ORDER

16. Following agreement between the Applicant and Respondent the Tribunal varies the Prohibition Order as stated above in paragraphs 13, 14 and 15.
17. Either party may appeal this decision to the Upper Tribunal. An application for permission to appeal should in the first instance be made to this Tribunal within 21 days of the date upon which this decision was made.

DATED this 5th day of April 2018

A handwritten signature in black ink, appearing to be 'Jack Rostron', written in a cursive style.

CHAIRMAN *Jack Rostron*