

Y TRIBIWNLYS EIDDO PRESWYL

RESIDENTIAL PROPERTY TRIBUNAL

Housing Act 2004 – Prohibition Order

Reference: RPT/0011/09/22

In the matter of premises at 27A Central Drive, Shotton, Flintshire, CH5 1LR

Applicant: Clematis Estates Limited

Respondent: Flintshire County Council

Tribunal: Siân Westby (Legal Chair)
David Jones FRICS (Surveyor Member)
Bill Brereton (Lay Member)

Reasons and Decision of the Residential Property Tribunal

1. This is an appeal by the long leaseholder, Clematis Estates Limited (“the Applicant”), heard on 24 March 2023 against a Notice of a Prohibition Order (“the Prohibition Order”) dated 19 August 2022 which was served upon the Applicant by the local housing authority, Flintshire County Council (“the Respondent”), in respect of the property known as 27A Central Drive, Shotton, Flintshire, CH5 1LF (“the Property”).
2. The Tribunal has already determined, by way of a preliminary issue at a Case Management Conference held on 16 November 2022, that copies of the Order had been served on all relevant parties pursuant to paragraph 2(2) of Part 1, Schedule 2 to the Housing Act 2004.
3. The issues that the Tribunal now has to consider include:
 - a. Do hazards (for example excess cold) exist and, if so, what category is applicable?
 - b. Is there a management order in force?
 - c. Should the council (Respondent) have taken enforcement action?
 - d. If so, what enforcement action is appropriate and is it the case that serving a Prohibition Order would be the best course of action in relation to any relevant hazard(s)?

- e. If a prohibition order is the correct action, do the contents of the order comply with the requirements of section 22 of the Act?
- f. Should the tribunal confirm, quash or vary the prohibition order and/or should the operation of the prohibition order be suspended for any reason, in accordance with section 23 of the Act?

Inspection

4. The Tribunal inspected the Property at 11.00am on 22 March 2023. The Applicant did not attend and was not represented at the inspection, although it had been notified of the time and date of the inspection by an email dated 2 February 2023 from the Tribunal's office. The Respondent was represented by Miss Lucinda Dodd, Environmental Health Officer for the Respondent. The Tribunal and Miss Dodd were given access to the Property by a Ms Laura Hilton who is a sub-tenant of both the Property and the shop beneath it. The Applicant is Ms Hilton's landlord under a sub-lease.
5. The subject Property is an end of terrace first floor flat located in a parade of shops which itself is located on a large residential estate, originally developed by the Respondent in the 1960s. Access to the flat is from the rear of the Property up a single flight of external steps. The Property comprises an entrance hallway, living room, two bedrooms, a kitchen and a bathroom, all of which are on a single level.
6. At the time of the Tribunal's inspection, the Property was unoccupied and was absent of any furniture or personal belongings.
7. In general, the Property is not in good habitable order and requires significant maintenance and repair. At the time of the inspection, it was noted that some repairs were underway, for example, a new soil stack had been installed to the bathroom, and the interior of the Property had been altered, for example, some of the walls and ceilings appeared to have been repainted and a battery-operated smoke detector had been installed in the hallway. These repairs and alterations had been undertaken since the date that the Respondent had last inspected the Property on 11 August 2022.
8. However, the Tribunal noted that the Property still required significant repair works. For example, a window pane was broken and the break in the window had been taped up, the condition of the electrical wiring did not appear adequate and many of the windows in the Property would not close properly, leaving gaps between the frame and the window.

The hearing

9. The hearing was convened remotely by Microsoft Teams on 24 March 2023 commencing at 10.00am. The Applicant did not attend and the Respondent was represented by Miss Lucinda Dodd.

10. Pursuant to regulation 32 of the Residential Property Tribunal Procedures & Fees (Wales) Regulations 2016, *'where a party fails to appear at a hearing the tribunal may proceed with the hearing if (a) it is satisfied that notice of the hearing has been given to that party in accordance with these Regulations; and (b) it is not satisfied that there is a good reason for the failure to appear'*. Having reviewed a copy of the email dated 2 February 2023, sent to the Applicant and notifying the Applicant of the hearing, the Tribunal was satisfied that the Applicant had been notified of the hearing pursuant to the Regulations and was not aware of any good reason for the Applicant's failure to appear, and therefore proceeded with the hearing in the Applicant's absence.

The Applicant's Evidence

11. The Applicant's application form to the Tribunal dated 8 September 2022 appealing the Prohibition Order, states that the Applicant's reasons for the appeal are that:

- a) without prejudice to the Applicant's assertion that the Order had been served on the wrong party, (which the Tribunal dealt with as a preliminary issue – see paragraph 2 above) the Applicant contended that *'another course of action would be the best course of action'*. It is apparent that the Applicant is referring to paragraph 8(2) of Part 3 of Schedule 2 to the Housing Act 2004 which states that an appeal can be made on the ground that either an improvement notice, a hazard awareness notice or a demolition order is the best course of action in relation to the hazard in respect of which the Order was made.
- b) the statement of reasons attached to the Prohibition Order state that *'the hazards encountered do not pose an imminently serious threat of extreme or severe harm to the health and safety of occupiers and visitors to the property'* and therefore the Applicant disputes that the Property could not be occupied whilst being repaired.

12. Pursuant to the Tribunal's Directions Order dated 17 November 2022, the Applicant was to provide to the Tribunal and the Respondent, by no later than noon on 20 January 2023, a bundle of relevant documents for use at the hearing which was to include, amongst other things, an expanded statement of the reasons for the appeal, any additional grounds upon which it wishes to rely and a copy of any expert report and witness statements that it wished to rely upon. No additional documents or correspondence has been received from the Applicant.

The Respondent's Evidence

13. On 16 February 2023, the Tribunal received from the Respondent a bundle of documents in preparation for the hearing on 24 March 2023, pursuant to the Tribunal's directions.

14. The Respondent's evidence is that the taking of enforcement action and the serving of the Prohibition Order was the correct decision for it to make, having regard to the HHSRS Operating and Enforcement Guidance.
15. On 23 June 2022, the Respondent inspected the Property and found there to be three Category 1 hazards and four Category 2 hazards. Consequently, the Respondent served a preliminary notice on Ms Laura Hilton on 1 July 2022, requiring various works to be carried out to the Property over various timescales.
16. In the weeks that followed, the Respondent had various correspondences with both the Applicant and Ms Hilton. However, in early August 2022, the Respondent received a letter from the Applicant dated 8 August 2022 in which it stated that it did not agree to carry out the works set out in the preliminary notice and it was not obliged in law to carry out the works. The letter stated that it was the Applicant's sub-tenant, Ms Hilton, who should carry out the required works.
17. The Respondent had also liaised with Ms Hilton regarding the works. Ms Hilton had replaced a roof tile at the Property but had informed the Respondent that she did not have the funds to carry out the remaining works to the Property. At this time, the Property was occupied by a woman and new-born child and Ms Hilton had expressed her concern for their health due to the sub-standard condition of the Property. This was supported by a witness statement of Ms Hilton dated 1 February 2023, which was included in the Respondent's bundle.
18. A second inspection of the Property was carried out by the Respondent on 11 August 2022 and, save for a roof tile that Ms Hilton had replaced (which remedied one of the Category 2 hazards), none of the other deficiencies identified in the preliminary notice had been addressed. Consequently, and in light of the correspondence from both the Applicant and Ms Hilton confirming that they could not or would not carry out the works required to the Property, the Respondent served the Prohibition Notice on all relevant parties.
19. The Prohibition Notice prohibited the use of the Property 'for temporary or permanent living' until remedial action had been taken in respect of the hazards identified in the notice. The Prohibition Notice identified three Category 1 hazards, relating to excess cold, electrical hazards and fire, as well as two Category 2 hazards, relating to Damp and Mould Growth and Personal Hygiene, Sanitation and Drainage. For each hazard, at least one deficiency was identified and a specification of work was given for each deficiency.
20. Miss Dodd's evidence was that the Prohibition Notice was the most appropriate method of enforcement in this case as the hazards identified were too serious for a hazard awareness notice as such a notice would not specify a timeframe for the works to be undertaken.
21. Given that both the Applicant and Ms Hilton had confirmed that they would not or could not carry out the remedial works, Miss Dodd's evidence was that an

improvement notice would not be an appropriate form of enforcement as it had been made clear that compliance with an improvement notice could not and would not be achieved.

22. Miss Dodd also confirmed that the hazards identified were not believed to pose an imminent serious threat of extreme or severe harm which would warrant the service of an Emergency Prohibition Order and there was no good reason known to the Respondent that would warrant the service of a Suspended Improvement Notice.
23. The bundle from the Respondent confirms that the Property is not subject to a management order under Chapters 1 or 2 of Part 4 of the Housing Act 2004.
24. At the hearing, the Tribunal asked the Respondent whether the installation of the battery-operated smoke detector would affect her categorisation of the fire hazard identified in the Prohibition notice. Miss Dodd confirmed that, although the smoke alarm would be a consideration, it would not affect her categorisation of the fire hazard as a Category 1 hazard. Miss Dodd confirmed that this was due to the commercial premises beneath the Property which had a 3-phase electrical system installed which posed a greater fire risk. Miss Dodd confirmed that she would expect a mains-operated interlinked fire detection and alarm system to be installed.
25. At the hearing, Miss Dodd also confirmed that due to the nature and severity of the hazards identified at the Property, she did not consider that it was safe or appropriate for the necessary repair works to be carried out at the Property whilst it was occupied.
26. The Respondent also confirmed that there was no Electrical Installation Condition Report nor an up-to-date Gas Safety Certificate for the Property and further stated that it was her understanding that the Property was not registered with Rent Smart Wales, as is required for residential rental properties in Wales.

The Law

27. The relevant law is as follows:
28. The Housing Act 2004 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.
29. 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 most appropriate. Sections 20 and 21 empower the local housing 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.

30. 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 the Residential Property Tribunal which may by Order confirm, quash or vary the order.
31. 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 sets of guidance in relation to the HHSRS, issued by the Welsh Government: The Operating Guidance and the Housing Conditions: Enforcement Guidance.

Discussion

32. Pursuant to paragraph 3 above, the issues for the Tribunal to consider are:

32.1 Do hazards (for example excess cold) exist and, if so, what category is applicable?

Although it was clear that some attempts were being made to repair the Property and address some of the issues, for example, the installation of a battery-operated smoke detector, these were not sufficient to remedy the deficiencies and hazards identified in the Prohibition Notice. Of particular concern to the Tribunal were the windows which would not close properly, leading to significant draughts. There were also clearly electrical hazards present.

Having heard the Respondent's evidence and having inspected the Property, the Tribunal considers that all of the Category 1 hazards identified by the Respondent are in existence and, therefore, the Respondent's HHSRS calculations in respect of these hazards are justified.

Based upon the evidence before it and its inspection of the Property, the Tribunal considers that all of the Category 2 hazards identified by the Respondent are in existence and the Respondent's HHSRS calculations in respect of these hazards are justified.

32.2 Is there a management order in force?

Upon the Respondent's evidence, the Tribunal is satisfied that the Property is not subject to a management order under Chapters 1 or 2 of Part 4 of the Housing Act 2004.

32.3 Should the council (Respondent) have taken enforcement action?

The Tribunal determines that due to the Category 1 and Category 2 hazards that exist at the Property, the Respondent was correct to take enforcement action.

32.4 If so, what enforcement action is appropriate and is it the case that serving a Prohibition Order would be the best course of action in relation to any relevant hazard(s)?

Here the Tribunal has regard to paragraph 8(2) of Part 3 of Schedule 2 to the Housing Act 2004. Due to the nature and number of Category 1 and Category 2 hazards present at the Property, and their potential severity, the Tribunal is satisfied that the service of a hazard awareness notice was not an appropriate course of action in the circumstances.

As the hazards identified at the Property are clearly remediable, as set out in the specification of works contained within the Prohibition Notice, the Tribunal does not consider that a demolition notice would be an appropriate course of action.

Based upon the evidence contained within the Respondent's bundle confirming that neither the Applicant nor Ms Hilton were willing and/or able to carry out the repair works required to remedy the deficiencies that had been identified at the Property, the Tribunal agrees with the Respondent that an Improvement Notice would not have been an appropriate or effective method of enforcement.

Accordingly, the Tribunal is satisfied that the service of the Prohibition Order was appropriate and, indeed, was the best course of action in the circumstances.

32.5 If a prohibition order is the correct action, do the contents of the order comply with the requirements of section 22 of the Act?

Having reviewed the Prohibition Order, the Tribunal is satisfied that the contents of the Prohibition Order comply with the requirements of Section 22 of the Housing Act 2004.

32.6 Should the Tribunal confirm, quash or vary the Prohibition Order and/or should the operation of the prohibition order be suspended for any reason, in accordance with section 23 of the Act?

For the reasons set out above, and based upon the evidence before it and its inspection of the Property, the Tribunal considers the service of

the Prohibition Order to be justified and therefore confirms the Prohibition Order and dismisses the appeal.

Order

33 The Tribunal confirms the Prohibition Order and dismisses the appeal.

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 is made.

Dated this 28th day of March 2023.

Siân Westby
TRIBUNAL JUDGE