



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

Case Reference : **LON/00BJ/HPO/2018/0001**

Property : **Reservoir Cottage, 1 Wildcroft
Road, London SW15 3TP**

Appellant : **Ms. Marketa Beck**

Representative : **Mr. Khaliq Nasir**

Respondent : **The London Borough of
Wandsworth (LBW)**

Representative : **Mrs Laura Curror & Ms Lola
Adepoju, Public Health, LBW**

Types of Application : **Appeal against a Prohibition Order**

Tribunal Members : **Judge Tagliavini
Mr. T W Sennett MA FCIEH**

**Date and venue of
Hearing** : **23 March 2018**

Date of Decision : **10 May 2018**

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the appeal against the Prohibition Notice dated 27 November 2017 is allowed and quashes the said Notice.

The application

1. Ms. Beck is the owner of property situate at Reservoir Cottage, 1 Wildcroft Road, London SW15 3TP (“the Property”) and appeals against a Prohibition Order dated 27 November 2017, made by the Respondent local authority pursuant to section 20 of the Housing Act 2004 (“the 2004 Act”), prohibiting the use of the said Property for residential purposes and requiring remedial works to be carried out.

The background

2. The Property comprises a single storey solid wall detached cottage, previously used as an attendant’s cottage as part of the Putney Heath reservoir complex but has since been converted into residential property. The Property was let under a shorthold tenancy agreement* dated 5 October 2015 at a rent of £2,296.66 per month, comprising three bedrooms, one ensuite, with a living room, a kitchen and bathroom and served by an electrical heating system. On 17 November 2017 the Respondent inspected the Property and satisfied itself that both category 1 and 2 hazards pursuant to the Housing Health and Safety Rating System existed. However, in the Prohibition Notice the Respondent relied on the category 1 hazards only, which are identified as Excess Cold, Electrical Hazards and Fire Hazards as set out in Schedule 1 of the Notice and totalling 23 separate defects.

**The tenancy agreement named Mr. Khaliq Nasir as the landlord, rather than as the landlord’s agent and giving his address as 75-77 Lydden Grove, London SW18 4LY*

The inspection

3. Prior to the hearing of the appeal, the tribunal conducted an inspection of the Property in the company of the parties and their representatives.

The issues

4. At the start of the hearing the tribunal identified that as the appeal is by way of a rehearing, the Respondent was to satisfy the tribunal that the Prohibition Notice had been properly made under the requirements of the 2004 Act, and thereafter the tribunal should consider whether to

confirm, quash or vary the Prohibition Notice pursuant to its powers provided by Schedule 2, Part 1 of the 2004 Act.

The Respondent's case

5. In the evidence relied upon at the hearing, the Respondent provided the tribunal with a bundle of documents, which included letters dated 10 November 2017 and addressed to Ms Beck at the subject property, notifying her and the occupiers of its intention to inspect the Property on 17 November 2017 stating “*..that it is a legal requirement that the owner and occupier of the property is given at least 24 hours’ notice of the inspection..*” Subsequently an inspection was carried out on 17 November 2017, without the Appellant or her representative present, and at which, a number of photographs were taken of the identified hazards, copies of which, were provided to the tribunal. Email correspondence included in the bundle of documents and dated variously 22 and 24 November 2017, showed that the Respondent was still endeavouring to get contact details for the Appellant and her agent Mr. Nasir, as at those dates. Subsequently, the Prohibition Notice was served on 27 November 2017.
6. Tat the hearing, the Respondent relied upon a statement of Ms Laura Curror dated 27 February 2018, in which details of the category 1 and 2 hazards were provided. Ms Curror stated that although the category 2 hazards could be dealt with by way of a Preliminary Improvement Notice, the category 1 hazards were sufficiently severe, numerous and unable to be remedied while the occupiers remained in situ, particularly where three children were present. Ms. Curror detailed the attempts made to contact Mr. Nasir, all of which occurred after the inspection. Date.
7. Ms Curror told the tribunal that she relied upon section 239 of the Act providing for 24 hours’ notice of the inspection to be given and section 246(9) making provision of service of notices under s.233 of the Local Government Act 1972. This section of the 1972 Act makes provision for the proper service of documents at the last known address of the landlord or his representative. As the land registry report recorded Ms Beck’s address as the subject property address it was regarded as good service to send the notice of the inspection to that address. Ms Curror also stated that although an alternative address had been recorded in communications held by Mr. Vincent, her predecessor at the local authority, in around February 2017, she considered service of documents at the subject property address was nevertheless appropriate. Ms Curror also asserted that in any event, no prejudice had been caused as Ms Beck had clearly received the Prohibition notice served as evidenced by this appeal.

The Appellant's case

8. The Appellant relied on a separate bundle of documents provided to the tribunal and included the application and an expanded statement of the Grounds of Appeal. In these, it was said that the first contact made by email with Mr. Nasir as the landlord's agent was on 23 November 2017, with the Prohibition Notice being received at his offices on 1 December 2017. Attempts to establish communication with the local authority's relevant officers in order to seek the replacement of the Prohibition Notice to a Hazard Awareness Notice (HAN) were unsuccessful. The Appellant stated that the defects identified by the Respondent could be remedied more appropriately under a HAN. Mr. Nasir stated that contact details for the landlord/agent had been provided to the local authority in early 2017 and included Mr. Nasir's office address, his email, telephone, fax number and mobile telephone number. Despite this, no notice had effectively been given or received of the inspection carried out on 17 November 2017 to the Appellant or her agent. Mr. Nasir stated that many of the repairs identified by the Respondent had been caused by the tenant's actions, including damage to the double-glazed windows, the heating system and the electrical system. Further, the tenant who had withheld rent with a promise to carry out repairs himself had prevented the landlord/agent/contractors from accessing the property to assess the need for repairs and carry them out., after he had failed to do so himself.

The tribunal's decision and reasons

9. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.
10. On inspection, the tribunal found the Property to be vacant and undergoing considerable work to its electrical and heating installations as well as work to remedy the problem with damp and general refurbishment. The tribunal noted various items of disrepair, which its finds were caused by the tenant and included damage to the family bathroom, the electrical installations and the heating system. In light of the tenant's actions in causing much of the damage now relied upon by the Respondent to issue a Prohibition Notice, the tribunal finds that the issuance of this Notice is inappropriate in all the circumstances. The tribunal notes the initial complaints made by the tenant has led to his rehousing by the Respondent and his vacating of the premises has been utilised by the Appellant to carry out extensive works until it can be re-let.
11. Further, the tribunal finds that in any event the Prohibition Notice is invalid as the requirements of the 2004 Act have not been met. The relevant parts of section 239 state:

239 Powers of entry

(1) Subsection (3) applies where the local housing authority consider that a survey or examination of any premises is necessary and any of the following conditions is met —

(a) the authority consider that the survey or examination is necessary in order to carry out an inspection under section 4(1) or otherwise to determine whether any functions under any of Parts 1 to 4 or this Part should be exercised in relation to the premises;

(b) the premises are (within the meaning of Part 1) specified premises in relation to an improvement notice or prohibition order;

(3) Where this subsection applies—

(a) a person authorised by the local housing authority (in a case within subsection (1)), or

(b) the proper officer (in a case within subsection (2)),

may enter the premises in question at any reasonable time for the purpose of carrying out a survey or examination of the premises.

(5) Before entering any premises in exercise of the power conferred by subsection (3), the authorised person or proper officer must have given at least 24 hours' notice of his intention to do so—

(a) to the owner of the premises (if known), and

(b) to the occupier (if any).

12. The relevant parts of section 233 of the Local Government Act 1972 state on which the Respondent relies state”

233 Service of notices by local authorities.

(1) Subject to subsection (8) below, subsections (2) to (5) below shall have effect in relation to any notice, order or other document required or authorised by or under any enactment to be given to or served on any person by or on behalf of a local authority or by an officer of a local authority.

(2) Any such document may be given to or served on the person in question either by delivering it to him, or by leaving it at his proper address, or by sending it by post to him at that address.

(3) Any such document may—

(4) For the purposes of this section and of section 26 of the M1 Interpretation Act 1889 (service of documents by post) in its application to this section, the proper address of any person to or on whom a document is to be given or served shall be his last known address, except that—

(5) If the person to be given or served with any document mentioned in subsection (1) above has specified an address within the United Kingdom other than his proper address within the meaning of subsection (4) above as the one at which he or someone on his behalf will accept documents of the same description as that document, that address shall also be treated for the purposes of this section and section 26 of the M2 Interpretation Act 1889 as his proper address.

(7) If the name or address of any owner, lessee or occupier of land to or on whom any document mentioned in subsection (1) above is to be given or served cannot after reasonable inquiry be ascertained, the document may be given or served either by leaving it in the hands of a person who is or appears to be resident or employed on the land or by leaving it conspicuously affixed to some building or object on the land.

(10) Except as aforesaid and subject to any provision of any enactment or instrument excluding the foregoing provisions of this section, the methods of giving or serving documents which are available under those provisions are in addition to the methods which are available under any other enactment or any instrument made under any enactment.

13. The tribunal finds that. The Respondent made no reasonable attempt to ascertain the address or other contact details of the Appellant or her agent despite, these details being available to them from their own records and on the tenancy agreement that was eventually supplied to them or even by making enquiries of their Housing Benefit and Council Tax departments to see if the landlord's details were held by them. To rely upon the Property address as good service without making any of these reasonable enquiries, leads to, in the tribunal's view, an invalidation of the letter of 10 November notifying of the inspection, the subsequent inspection on 17 November 2017 and the Prohibition Notice dated 27 November 2017. It is a mandatory requirement of the 2004 Act to provide the landlord of notice of the inspection, (unless the emergency provisions apply), and therefore the tribunal is not required to consider whether any 'prejudice' has arisen. In any event had Ms Beck or Mr. Nasir been present at the inspection, it is probable that the

damage caused by the tenant would have been pointed out and the attempts previously made to carry out repairs explained, thereby leading the Respondent to consider whether, in the circumstances a Prohibition Notice was appropriate.

14. Therefore, the tribunal finds that the Prohibition Notice dated 27 November 2017 is invalid and determines that it is appropriate to exercise its powers and quashes it.

Name: Judge Tagliavini

Dated: 10 May 2018