



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

Case Reference : **MAN/00EH/HPO/2018/0006**

Property : **234 Yarm Road, Darlington,
County Durham DL1 1XW**

Applicant : **Mrs A M Nixon**

Respondent : **Darlington Borough Council**

Type of Application : **Housing Act 2004 – Schedule 2 para 7
(1) Appeal against a Prohibition Order**

Tribunal Member : **Mr J Platt FRICS
Mr W Reynolds MRICS**

Date of Determination : **5 June 2019**

Date of Decision : **14 June 2019**

DECISION

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Decision of the Tribunal

1. The prohibition order made by Darlington Borough Council on 23 November 2018, in respect of 234 Yarm Road, Darlington DL1 1XW, is confirmed. The appeal by Mrs Anne Marie Nixon, is therefore, dismissed.

Introduction

2. Mrs Nixon appealed against the making of a prohibition order by Darlington Borough Council (“the Council”) under Section 20 of Housing Act 2004, in respect of the property known as 234 Yarm Road, Darlington DL1 1XW (“the Property”).
3. The prohibition order was made on 23 November 2018. The appeal to the Tribunal was received on 19 December 2018. Directions were issued on 26 February 2019 and the matter was heard on 24 May 2019. The Tribunal inspected the property prior to the hearing.
4. At the hearing, the applicant represented herself. The respondent was represented by in-house solicitor, Mrs Bethany Symonds. Mrs Pamela Taylorson and Mrs Christine Booth, Private Sector Housing Officers, attended as witnesses. Mrs Wellington attended as an observer.
5. Mrs Taylorson has provided a witness statement dated 1 April 2019 in which she confirms that she has a BSC (Hons) Environmental Health degree and relevant training in the Housing Health and Safety Rating System.

Background

6. The property at 234 Yarm Road, Darlington DL1 1XW is a dormer bungalow which has been converted from a shop / bungalow for use as a house in multiple occupation (“HMO”). The freehold title is owned by the applicant.
7. The Property comprises: living room / kitchen and 6 bedrooms each with either an en-suite or shared bathroom facilities. All of the Property is situated at ground floor level apart from “Room 6” which is on the first floor. An access door off the living room leads to both Room 3 and the access stairs to Room 6.
8. Room 6 is situated within the roof space and hence has sloping ceilings and a velux window with (at the time of inspection) a top hung opening sash.
9. Being aware of the revised licensing requirements for HMO’s with effect from 1 October 2018, the Applicant submitted an application for a HMO licence on 13 September 2018. The application requested a licence be granted for 6 individuals to occupy 6 bedrooms on 6 lettings.

10. As part of the licence assessment process, Mrs Taylorson made a pre-arranged inspection of the Property on 10 October 2018.
11. Mrs Taylorson identified a number of fire safety hazards during the inspection on 10 October 2018, which were discussed with the Applicant during the visit and subsequently by email.
12. Mrs Taylorson's primary concern (and the primary issue which is outstanding at the date of the hearing) related to the lack of a fire protected escape route from Room 6. The primary escape route was deemed inadequate as it involved passing through two high risk rooms; the living room and kitchen. Whether the open plan living room / kitchen is considered to be one room or two rooms is not important for the point at issue.
13. Several emails were exchanged between the Council and the Applicant and a further visit to the property was undertaken by Mrs Cheryl Carter, Private Sector Housing Officer, on 25 October 2018, to provide a second opinion to that of Mrs Taylorson.
14. Mrs Carter confirmed Mrs Taylorson's opinion that Room 6 could not safely be occupied as a bedroom until / unless a safe means of escape was provided. The Council confirmed to the Applicant on 30 October 2018 that its intention was to issue a licence for the 5 ground floor bedrooms and serve a prohibition order restricting the use of Room 6.
15. A prohibition order was served on 23 November 2018.

The prohibition order

16. The order prohibits the use of the attic bedroom (Room 6). It prohibits the room from being used for residential use for sleeping or resting.
17. Schedule 1 identifies fire safety as a category 1 hazard under the Housing, Health and Safety Rating System (HHSRS). It lists the deficiencies (relating to Room 6) giving rise to the fire hazard as:
 - a. The primary means of escape from fire for Room 6 is through two risk rooms; lounge and kitchen and the means of escape is not through a protected route.
 - b. The staircase to Room 6 is unprotected by structural features (fire door) from high risk areas (lounge and kitchen)

- c. The secondary 'emergency' means of escape for Room 6 is through a central hung roof 'Velux' type window. The opening does not give the minimum requirements for an openable area that is at least 0.33m². The bottom of the openable area is higher than the maximum distance of 1100mm above the floor.
18. Additional deficiencies that were identified included the primary means of escape from Rooms 3 & 4 being through the unprotected lounge / kitchen, the lack of fire detection and alarm system certificate and log book, lack of a thumb turn lock on the kitchen door and a missing smoke detector in Room 3.
19. Schedule 2 lists the work required to remedy the identified hazards. The work required in respect of the Room 6 hazards is,
- a. The installation of an automatic water suppression system in the lounge and kitchen areas.
 - b. Fitting a fire door to the living room at the bottom of the staircase.
 - c. Fitting an escape window which meets the minimum requirements in respect of both unobstructed openable area and maximum height above the floor.
20. Schedule 2 also lists the work required to remedy the additional identified hazards. This includes the installation of an automatic water suppression system in the lounge and kitchen areas to provide a protected primary means of escape from Rooms 3 and 4.

The Law

21. Part I of the Housing Act 2004 (the Act) sets out a regime for the assessment of housing conditions and a range of powers for local authorities to enforce housing standards. Housing conditions are assessed by the application of HHSRS.
22. Where a hazard or several hazards in a property are rated as HHSRS category 1 hazards, the options for enforcement include, by section 5 of the Act, the power to serve an improvement notice under section 11 or the making of a prohibition order under section 20.
23. By section 8 of the Act, the authority must prepare a statement of the reasons for its decision to take the relevant action.
24. A prohibition order is an order which prevents specified residential premises being used for all or any purposes. By section 22 the contents of prohibition orders are prescribed. By section 22(2)(e) the order must specify, in relation to the hazard (or each of the hazards) any remedial action which the authority

consider would, if taken in relation to the hazard, result in its revoking the order under section 25. Section 25 requires an authority to revoke an order if it is satisfied that the hazard in respect of which the order was made, does not then exist.

25. An improvement notice is a notice requiring the person on whom it is served to take remedial action in respect of the hazard, for example by carrying out the works.

26. Appeals in respect of prohibition orders are dealt with in Part 3 of Schedule 2 to the Act. Paragraph 7 of that schedule gives a relevant person a general right of appeal against service of a prohibition order. Paragraph 8 provides:

“8(1) An appeal may be made by a person under paragraph 7 on the ground that one of the courses of action mentioned in sub-paragraph (2) is the best course of action in relation to the hazard in respect of which the order was made.

(2) The courses of action are:

- (a) serving an improvement notice under section 11 or 12 of this Act;
- (b) serving a hazard awareness notice under section 28 or 29 of this Act;
- (c) making a demolition order under section 265 of the Housing Act 1985.”

The grounds of appeal

27. The applicant’s case is that an improvement notice would have been the best course of action rather than a prohibition order. She refers extensively to the LACORS Housing – Fire Safety Guidance and specifically (in summary):

- a. Fire safety must be based upon the level of risk presented by an individual property and its mode and level of occupation.
- b. Some fundamental principles apply to fire safety generally and these must be applied flexibly to meet the needs of a particular property.
- c. The fire safety approach adopted is to provide early warning of any fire to all occupiers and to ensure that they can safely evacuate the building to a place of permanent safety (total evacuation).
- d. A full 30 minute protected route is the preferred (ideal) option. However, in two-storey, normal risk HMOs the provisions of suitable escape windows from all bedsit rooms may be acceptable in lieu of a fully protected route.

28. The Applicant goes on to highlight specific aspects of the subject property that, in her view, make a prohibition order unnecessary. In summary:
- a. All of the tenants are young fit professional people in their twenties with no disabilities or dependencies.
 - b. The fire station is one mile away.
 - c. The flat roof accessed from the escape window in Room 6 is only approximately 2 meters in height.
29. There has been correspondence between the parties on the basis of the above points and largely related to the suitability or otherwise of the window in Room 6 as a suitable escape window.

The Inspection

30. The Tribunal inspected every room of the Property during the morning of 24 May 2019 and noted the following:
- a. A fire door has now been installed at the bottom of the stairs leading to Rooms 3 and 6.
 - b. The Velux window in Room 6 is now top hung and a removable step has been installed on the floor. The bottom of the window is approximately 1100mm from the top of the step.
 - c. The Velux window is fitted in a tiled pitched roof and the bottom of the window is approximately 2 metres (along the pitch) above the flat roof.
 - d. The flat roof adjoins the pitched roof above a bedroom but also extends above a shared bathroom.
 - e. The flat roof is approximately 2.74 metres above ground level at the rear courtyard. There is no external staircase or ladder.
 - f. The rear courtyard is accessed by a gate which leads to the driveway and onwards to the road i.e. ultimate evacuation.

The Hearing.

31. Mrs Nixon highlighted her grounds for appeal and that, in her opinion, the actions of the Council had been excessive and created a slur on her character. She pointed out that she had done everything recommended by the Council from her initial discussions in 2016 to date. In particular, she focused on her argument

that the window in Room 6 was a suitable escape window and pointed out that she had now installed a step and changed the window to a top hung sash.

32. On behalf of the Council, Mrs Symonds pointed out that undertaking the risk assessment and deciding on the most appropriate action was a matter of professional judgement. Mrs Taylorson had exercised her professional judgement (along with additional views from other professional members of the team) and having done so, came to the conclusion that the fire risk associated with escape from Room 6 was a category 1 hazard. Having identified a category 1 hazard, the Council has a duty to take enforcement action. In applying her professional judgement, Mrs Taylorson came to the view that a prohibition order in respect of the use of room 6 for sleeping or resting was the most appropriate action.

Deliberations and Decision

33. Mrs Nixon identified that she is anxious to ensure her property provides an appropriate home for her tenants that she and her tenants could be proud of and the Tribunal noted during the inspection that the property has been converted and furnished to a high standard. It appears to be well maintained and well managed. Mrs Nixon is far removed from the category of slum landlord or rogue landlord often referred to in the press.
34. During inspection, the Tribunal noted the following aspects of the window to Room 6:
- a. It does not open directly onto a flat roof
 - b. There is approx. 2 metres of tiled pitched roof between the bottom of the window and the flat roof
 - c. The bottom of the window is approximately 1100mm above the top of the removable step which has been installed
 - d. Despite now being top hung, it is necessary to push the window up against the weight of the window with ones back whilst trying to escape out of the window.
 - e. The flat roof is not entirely above a bathroom (as made out in the evidence). Initial escape would be onto the flat roof area above a bedroom and thereafter it is above a bathroom.
 - f. It is necessary to jump or descend approximately 2.74 metres from the flat roof into the rear courtyard at ground level, leading to total evacuation
35. The members of the Tribunal considered that they themselves would have significant difficulty exiting Room 6 via the window. If exit were required in the

circumstances of an emergency, it would most likely entail throwing oneself headfirst out of the window onto the pitched roof and sliding approximately 2m headfirst until reaching the flat roof.

36. The Tribunal has regard to Mrs Nixon's evidence that all tenants are young and fit. Whilst that is an appropriate factor for the Council to take into account, they need to start by considering the most vulnerable category i.e. a person over 60 years of age and, if appropriate, consider adjusting their assessment to reflect the actual occupiers. As the Tribunal commented during the hearing, a young fit tenant may have an elderly visitor at the time a fire breaks out.
37. In conclusion, the Tribunal does not consider the window to Room 6 offers a suitable secondary means of escape that is adequate in circumstances where the primary means of escape is not itself through a protected route. In the professional judgement of the Council, in the absence of an alternative protected route of escape, it is necessary to prohibit the use of Room 6 for sleeping or resting. The Tribunal agrees with this professional judgement and confirms the prohibition order. The appeal is therefore, dismissed.

J Platt
Tribunal Judge
5 June 2019

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the Tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).