FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/OOBE/HPO/2014/0008**
Property	**:**	**Flat 3, 5 Maxted Road, London SE15 4LL**
Applicant	**:**	**Hertford UK Ltd**
Representatives	**:**	**Mr Majid Saniinejed, director**
Respondent:	**:**	**London Borough of Southwark**
Representatives	**:**	**Mr J Parker, barrister instructed by Ms C Barrientos, solicitor**
Type of application	**:**	**Appeal against a Prohibition Order**
Tribunal Judge	**:**	**Angus Andrew** **Mr Trevor W Sennett MA, FCIEH** **Mr Owen Miller BSc**
Date and venue of hearing	**:**	**28 July 2014** **10 Alfred Place, London WC1E 7LR**
Date of decision	**:**	**13 August 2014**

DECISION

Decision

1. The Prohibition Order made by the London Borough of Southwark on 3 April 2014 is confirmed. The appeal by Hertford UK Ltd is accordingly dismissed.

The application and the hearing

2. On 29 April 2014 the Tribunal received an appeal from Hertford UK Ltd against a Prohibition Order made by the London Borough of Southwark on 3 April 2014. The appeal was made pursuant to section 27 of and schedule 2 to the Housing Act 2004 ("the 2004 Act").

3. There was a case management hearing on 29 May 2004 at which Hertford were represented by Mr Saniinejed and Southwark by Ms Barrientos. Comprehensive directions were issued. Hertford were directed to file and serve a document bundle by 27 June 2004. The document bundle was to include a full statement of reasons and statements of any witnesses who would give evidence at the hearing. Hertford did not comply with that direction. It produced no documents until the morning of the hearing when Mr Saniinejed produced a short statement, a page of guidance from the building regulations, a number of photographs and a plan. Mr Saniinejed said that he had not complied with the directions because he did not believe that the hearing would proceed. His explanation was not plausible. As recently as 26 June 2014 Ms Barrientos had written to Mr Saniinejed confirming that Southwark would *"proceed to follow the timetable of the directions sent by the Residential Property Tribunal"*. Further letters had been sent by Southwark to Hertford on 3 and 10 July 2014 requesting its document bundle but it was not forthcoming.

4. At the hearing Southwark was represented by Mr Jack Parker a barrister. He called Ms Renju Karki, an enforcement officer to give evidence. He also relied on a short statement tendered by Mr Kevin Sivell a fire safety inspector in the London Fire Brigade, although Mr Sivell did not attend for cross examination. Hertford were represented by Mr Saniinejed who also gave evidence on its behalf. Mr Saniinejed is a director of Hertford.

Background

5. 5 and 5A is a three storey end of terrace property at the junction of Maxted Road and Sandison Street. The ground floor originally comprised one or two shops fronting Maxted Street. A rear door on Sandison Street provided a rear access to the shops and also to the upper flats. On 20 November 2008 Hertford took a long lease of part of the ground floor that was previously used as a shop. On 18 May 2009 Mr Saniinejed and

Hertford were granted planning permission to convert the shop *"to a one bedroom unit, with demolition of rear to create a patio area"*. In contravention of that permission Mr Saniinejed and Hertford converted the shop to two residential units, one at the front and a second, which is the subject of this appeal, at the rear. Access to the rear flat is gained through the door on Sanderson Street.

6. The rear flat comprises a toilet and shower room, a living area that includes kitchen facilities and a small bedroom that is accessed directly from the living area. Part of the living area would originally have formed part of the rear garden or patio but at some stage it has been infilled at ground floor level only and during the hearing this was referred to as *"the ground floor extension"*. Double doors lead from the ground floor extension to a narrow landlocked triangle of land enclosed by a high close board fence. The distance from the double doors to the rear fence is approximately 1.2 metres. There is no means of egress from the parcel of land to the east. To the west of the double doors the rectangle opens out into a small garden with a wooden shed in a patio area. The distance from the double doors to the furthest corner of the west fence is, on Mr Saniinejed calculation, 6.2 metres. From an inspection of the Land Registry entries in the bundle it seems fairly clear that this small garden extension is not included in Hertford's title or indeed the freehold reversionary title, in which Hertford also has an interest.

7. In December 2012 Hertford granted a sublease of the rear flat to Mr Saniinejed so that he is the owner of the flat. However, nothing turns on this because copies of the Prohibition Order were served on all the relevant parties with an interest in the building including Mr Saniinejed.

8. The conversion of the former shop into two residential units was a planning breach and Southwark took enforcement action. It issued an enforcement notice on 17 August 2012 requiring Hertford and Mr Saniinejed to cease using the former shop as two self-contained residential units. It also required the removal of all internal partitions dividing the two flats. Mr Saniinejed and Hertford appealed the enforcement notice but their appeal was unsuccessful. By decision dated 12 March 2013 Ms Sarah Morgan LLB (Hons) MA solicitor, an inspector appointed by the Secretary of State for Communities and Local Government, upheld the enforcement notice.

9. Hertford and Mr Saniinejed have failed to comply with the enforcement notice notwithstanding their unsuccessful appeal. The rear flat is currently let to a tenant who complained to Southwark about its condition. Mr Saniinejed is currently seeking possession of the rear flat and in those proceedings his tenant has counter claimed for £16,000 for damage to her health and goods.

10. Following the tenant's complaint in June 2013 various Southwark officials inspected the rear flat and Ms Karki completed a Housing, Health and

Safety Rating System assessment in September 2013. A Prohibition Order served on 28 February 2014 was withdrawn and a second Prohibition Order was served on both Mr Saniinejed and Hertford on 3 April 2014. The second Prohibition Order served on 3 April 2014 is the subject of this appeal.

11. The order in terms prohibits the use of the rear flat for residential accommodation and annexes two schedules as follows:

    a. Schedule 1 identifies lighting and fire as category 2 hazards under the Housing, Health and Rating System (HHRS). The lighting hazard is said to result from the lack of natural lighting in the bedroom. The fire hazard is said to result from an inadequate means of escape from the bedroom and also a lack of adequate fire precautions and adaptations.

    b. Schedule 2 records the work required to remedy the two identified hazards. It is in these terms: *"Reconfigure the flat in order to provide a safe means of escape from the bedroom to the place of ultimate safety and adequate natural lighting and background ventilation in accordance with the building regulation requirements"*.

The Statutory Framework

12. Part I of the 2004 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.

13. Where a hazard or several hazards in a property are rated as HHSRS category 2 hazards, the options for enforcement are set out in section 7 of the Act. They include the power to serve an improvement notice under section 12, a prohibition order under section 21, a hazard awareness notice under section 29 or a demolition order under the Housing Act 1985.

14. By section 8 of the Act, the authority must prepare a statement of the reasons for its decision to take the relevant action.

15. 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.

16. 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 works. A hazard awareness notice simply advises the person on whom it is served of the category 2 hazard. The purpose of a demolition order is self evident.

17. The power to enter premises for the purpose of carrying out a survey or examination of the premises is contained in section 239(3) of the Act. By section 239(5), before entering any premises in exercise of the power in sub-section (3), the authorised person or proper officer must give at least 24 hours' notice of his intention to do so (a) to the owner (if known) and (b) to the occupier (if any). Where admission to the premises has been sought but refused, then by section 240 of the Act a justice of the peace may by warrant authorise entry onto the premises.

18. 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".*

<u>The grounds of appeal and issues</u>

19. In his statement handed in at the hearing Mr Saniinejed made no reference to the lighting hazard. During the hearing his position was simply that he would do anything requested by Southwark to remedy the hazard. He considered that Southwark were at fault for not having explained precisely what he should do to remedy the hazard.

20. Turning to the fire hazard Mr Saniinejed said that there was an adequate means of escape from the bedroom. The room itself has no windows and the only door is to the living room. However, in the event of a fire Mr Saniinejed said that an occupier could cross the living room to the double doors and thus gain excess to the rear garden that in his view would provide a place of safety in the open air. In short he disputed Ms Karki's

assessment of the fire risk. In disputing the risk he relied on guidance relating to the building regulations and in particular the following:

> *"in certain conditions, a single direction of escape (a dead end) can be accepted as providing reasonable safety. These conditions depend on the use of the building and its associated fire risk, the size and height of the building, the extent of the dead end and the number of persons accommodated within the dead end".*

21. In contrast Ms Karki relied on the fire safety guidance published by Lacors. Section 12 of the guidance deals with rooms where the only escape route is through another room. Such rooms are described as *"inner rooms"*. Paragraph 12.1 states that inner rooms *"should be avoided wherever possible"* but may be accepted where the inner room is not habitable such as a kitchen or bathroom. Paragraph 12.2 deals with habitable inner rooms and provides that they should only be accepted if *"the inner room has access to a suitable door opening into alternative safe route of escape, or it is situated on a floor which is not more than 4.5 m above ground level and has an escape window leading directly to a place of ultimate safety"*.

22. Section 14 of the guidance deals with escape windows and (in so far as the double door leading to garden can be regarded as an escape window) concludes with the following:

> *"the window or door should lead to a place of ultimate safety, clear of the building. However if there is no practical way of avoiding escape into a courtyard or back garden from where there is no exit, it should be at least as deep as the building is high"*.

Reasons for our decision

23. We deal firstly with the lighting hazard. The bedroom does not enjoy any direct natural lighting. The hazard was identified by Ms Karki during her HHSRS assessment. Mr Saniinejed did not dispute either the assessment or the risk. His case was simply that Southwark should have explained what it wanted him to do to eliminate the risk.

24. As observed section 22(2)(e) of the Act provides that: *"The order must specify, in relation to the hazard (or each of the hazards) to which it relates…….any remedial action which the legal authority consider would, if taken in relation to the hazard, result in revoking the order under section 25"*.

25. The second schedule to the Prohibition Order complied with that obligation. In terms of the lighting hazard Hertford and Mr Saniinejed must reconfigure the flat to provide adequate natural lighting. It was for Hertford and Mr Saniinejed and not Southwark to devise a means of providing adequate natural lighting to the bedroom. They could not sit on

their hands until Southwark provided a detailed specification to implement the identified remedial action.

26. The hazard had been correctly identified and it had not been remedied. Consequently there were no grounds for quashing or varying the Prohibition Order in so far as it related the lighting hazard.

27. The more serious hazard is the fire hazard because it could in certain circumstances result in serious injury or death. To an extent we had reservation with the guidance relied on by both parties. The Building Regulation guidance is concerned primarily with construction whilst our understanding is that Lacors, which was a government institution, no longer exists although that itself does not necessarily invalidate its historical guidance.

28. The building regulation guidance relied on by Mr Saniinejed does not in any event assist him. The central issue is not whether the small rear garden provides reasonable safety but whether there is an adequate means of escape from the bedroom in the event of a fire in the living room. It is obvious that no such means of escape exists. In the event of fire in the living room an occupier of the bedroom would have no means of escape.

29. As far as the Lacors guidance is concerned we agree with Mr Parker that paragraph 12.2 clearly requires *"an alternative safe route escape"* and that a single route of escape (in this case across the living room to the double doors) is insufficient. Consequently and for those reasons alone we are satisfied that there is no adequate means of escape and that Ms Karki again correctly identified a hazard that Hertford and Mr Saniinejed have failed to remedy.

30. Even if there was an adequate means of escape we agree with Mr Parker that the garden does not provide an adequate place of safety. The requirement that the garden *"should be at least as deep as the building is high"* is intended to protect escaping occupiers from the possibility of the building's collapse: it is the height of the building that is relevant and not, as Mr Saniinejed asserted, the height of the small rear extension. The height of the building was agreed by the parties to be about 12 metres and thus a place of safety some 12 metres distant would be expected. In this case the depth of the garden was only half the height of the building and consequently it did not provide a place of ultimate safety.

31. Although the point was not taken by Mr Saniinejed we were equally satisfied that the service of the Prohibition Order was the most effective means of enforcement. Neither a hazard awareness notice nor an improvement notice would at least in the short term protect the occupiers from the identified hazards whilst the service of the demolition order would be disproportionate.

32. Consequently and for each and all the above reasons we can confirm the Prohibition Order.

Name: Angus Andrew **Date: 13 August 2014**