

RESIDENTIAL PROPERTY TRIBUNAL

Property : 8A High Street,
Hungerford,
Berks.,
RG17 0DN

Appellant : Western Land PLC

Respondent : West Berkshire District Council

Case number : CAM/00MB/HPO/2006/0001

Date of Appeal : 15th July 2006

Type of Appeal : against Prohibition Order (Section 20 Housing
Act 2004)("the 2004 Act")

Tribunal : Mr. Bruce Edgington (lawyer chair)
Mr. David Brown FRICS MCI Arb

DECISION

1. The appeal against the making of a Prohibition Order on the 23rd June 2006 by West Berkshire District Council preventing the residential use of the top floor of the property succeeds in part. The Prohibition Order is varied to the extent that the property is not to be occupied for residential purposes by more than 2 adults under the age of 60 and one child over the age of 10.

REASONS

Introduction

2. This is an appeal against the making of a Prohibition Order by the Respondent. The application to appeal states that the Order was received on the 27th June but the Appellant's evidence in the form of a statement from Steven Hodges dated 15th August 2006 states that the Order was received by the Appellant company on the 26th June.
3. The Order is dated 23rd June and prohibits the Appellant from using the top i.e. the second floor of the property for residential use. It cites (a) the unsafe nature of internal stairs and (b) the lack of headroom in the rooms on and the stairway to the second floor. The discrepancy as to the date of

receipt is not important because it is clear that the Order was served within the Statutory 7 days of the Order being made.

4. At the same time, the Respondent served an Improvement Notice requiring remedial works to hazards relating to fire protection, the heating system and the risk of falls on the external stairs. However, this appeal does not relate to the Improvement Notice.
5. The Appellant lodged its appeal against the Order within the 28 day time limit and the essence of this appeal is set out in paragraphs 18 and 19 of the statement of Steven Hodges i.e.

"18. Throughout its 8 years of ownership of the property, Western Land PLC has had numerous tenants all of whom have been delighted to have the opportunity of living in the flat and have been genuinely sorry to leave. During this 8 year period, no incidents have been reported to Western Land PLC by any tenants or any problems notified due to the conditions stated in the prohibition notice.

19. The property is a Grade II listed building and therefore it is not possible, or practical, to alter the building in such a way as to resolve the issues contained within the prohibition notice. The remedial works are not practicable and, even if rebuilding was considered, it is unlikely that consent would be granted to such alterations due to the listed status of the building"

6. The Appellant thought that this appeal was suitable to be dealt with on a consideration of the papers and the Tribunal agreed. Accordingly, when giving directions on the 31st July 2006, the Tribunal gave notice in accordance with Regulation 18 of **The Residential Property Tribunal Procedure (England) Regulations 2006** that it would determine this case on a consideration of the papers after an inspection on or after the 18th August 2006. It was made clear that if either party wanted an oral hearing then this would be arranged. No request for an oral hearing was received.

The Statutory Framework

7. The 2004 Act has introduced a new Statutory scheme 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.
8. The scheme is based on an assessment of risk using the new Housing Health and Safety Rating System. The most serious risk of harm to a person creates a Category 1 hazard and if a local authority makes a Category 1 hazard assessment, it becomes mandatory under Section 5(1) for the local authority to take appropriate enforcement action. All other risks simply enable the local authority, in its discretion, to take such action. Section 5(2) sets out 7 types of action which are "appropriate" for a category 1 hazard. If 2 or more of those courses of action are available, the authority must take the course which they consider to be the most appropriate. If the authority chooses to serve an Improvement Notice, the

remedial action must be such as to ensure that the hazard ceases to be a category 1 hazard, but may extend beyond that – Section 11(5).

9. A person or company served with a Prohibition Order can appeal to a Residential Property Tribunal which may “confirm, reverse or vary the decision of the local housing authority” (Schedule 2, paragraph 13(3) to the 2004 Act).
10. The grounds of appeal can be that serving an Improvement Notice, serving a Hazard Awareness Notice or making a Demolition Order would be a more appropriate way of dealing with the hazard. If the Tribunal is considering such a ground, it must have regard to any guidance given to the local housing authority by the appropriate national authority.

The Prohibition Order

11. This attaches reasons for the making of the Order as required. It confirms the assessment by the Respondent of a Category 1 hazard and gives all the information as to its powers and the appeal route which are required. Attached Schedules then set out details of the hazards identified as stated above.
12. The particular hazards identify (a) a risk of falling on the stairs, particularly when trying to leave quickly in the event of fire, due to lack of headroom and narrow tread and (b) the rooms are below minimum ‘standard’ for occupancy as sleeping accommodation coupled with restricted access and door height.

The Inspection

13. The Tribunal was provided with a copy of an entry on the English Heritage website which states that 7 and 8 High Street, Hungerford were listed on the 10th September 1951 and are Grade II category. 8 High Street includes the subject property. It states that the property was built around 1700 and consists of 2 stories and an attic with modern shop fronts. It is the part of the building described as the attic which is the subject of the Order.
14. On the 14th September 2006, the members of the Tribunal inspected the property in the presence of representatives of both the Appellant and the Respondent.
15. Hungerford describes itself on its website as being a small historic town and that is certainly how it appeared to the Tribunal. The fairly wide High Street has limited parking and terraces of shops with what appeared to be living accommodation above in many cases. As one would expect, few of the properties in the High Street appear to have been built at the same time. The Tribunal has no difficulty in accepting the estimate on the English Heritage website of this property being built around 1700.
16. As is described in the papers, access to the first floor is not easy. It involves a rather tortuous route on foot from the High Street, along several

paths through adjoining properties and then up an open staircase at the rear.

17. Once in the property, it was clear that it was small but it was well presented with relatively modern facilities and reasonable carpets. There was no obvious serious damage and there appeared to be good natural lighting to most parts of the flat.
18. One enters directly into the kitchen off which are washing facilities and a shower. To the left is a doorway into a small hall leading to the lounge at the front with a view over the High Street.
19. Off the hall is a narrow staircase leading to the second floor on which is a bedroom at the front - in which was a double bed - and a single bedroom to the rear. Both have windows. It is this staircase and these rooms which form the subject of the Prohibition Order.
20. The staircase is steep and fairly narrow with a wall on one side and a sturdy timber handrail on the other side. There are newel posts at the top and at the bottom of the straight stretch of stairs before it turns at right angles at the bottom where there are 5 winders. Generally, the staircase was carpeted and appeared to be in good condition with the tread and riser dimensions being about the same until the winders at the bottom. The headroom above the winders is reduced to approximately 1500mm by a supporting beam above. At the head of the stairs, the sloping ceiling reduces headroom on one side to approximately 1500mm but a 6ft tall person standing upright on the other side will only just touch the ceiling. Lighting was good with natural light during daylight hours and a large ceiling light operated from the top and bottom of the stairs. Whilst it is possible to use the handrail for support, a young child would not be able to put his or her fingers round the newel posts.
21. The bedrooms were small although both Tribunal members who are about 6 feet tall could just stand upright in both. They could also stand upright on the landing and on the stairs until near the bottom where there was an overhead restriction as the stairs turn.

Other Relevant Evidence

22. The local housing authority helpfully disclosed to the Tribunal details of its calculations of the hazard scores.
23. Rosemary Green, a senior Environmental Health Officer also provided a statement from which it appears that the decision that the rooms on the second floor are not big enough came from Space Standard guidance set out in Section 326 of the Housing Act 1985 which applies to overcrowding. The relevant floor area for each room is calculated where the minimum ceiling height is 1530mm.
24. Using this method, the Respondent says that an average of 2140mm should be achieved over 75% of the floor area. This 75% is not a statutory

requirement. In the first bedroom there was no part of the ceiling over 1530mm. In the second bedroom only 35% of the floor area had an average height of 2140mm.

25. The hazards identified by the Respondent are crowding and space and falls on stairs. In their Statement of Reasons for the service of a Prohibition Order, the authority consider this to be the most appropriate course of action because:-
- “(a) the significant nature of the hazards and the risks they pose to occupiers and visitors would not warrant service of a Hazard Awareness Notice,*
 - (b) remedial action cannot be taken in this case and it is unreasonable to require work to be carried out*
 - (c) there is not an imminent risk to health and safety which would make an Emergency order appropriate*
 - (d) there is no good reason for making a suspended order*
 - (e) the high values of property in West Berkshire and the demand on available units of accommodation in the area would deem that demolition or clearance is not the most appropriate course”*
26. Both parties have presented their paperwork in a clear and concise way which the Tribunal has found to be very helpful. The issues, although difficult, are clearly set out.
27. Whilst this Tribunal could recalculate the HHSRS criteria, it did not consider that this was appropriate in this case. It appeared to the Tribunal that the risk of falling on stairs was clearly a Category 1 hazard. The Appellant has not challenged the classification of that hazard as category 1. The Respondent has calculated the hazard rating for Crowding and Space as 214, which is Rating E and Category 2.
28. Dealing with the grounds of appeal, the Tribunal accepts that the Appellant has had no complaints from tenants over the years. However, this does not necessarily mean that there have been no accidents nor that there was an absence of risk. What the appellants have to understand is that this is a new Statutory scheme which only came into effect in April 2006.
29. The Appellant must also understand that whether the local housing authority has or has not made decisions in respect of other properties is not relevant to this Tribunal's determination.

Assessment Guidance

30. The Tribunal is only required to consider guidance if it is considering whether the appeal should succeed because more appropriate action would be the service of an Improvement Notice, a Hazard Awareness Notice or the making of a Demolition Order. This is in paragraph 12(2) of Schedule 2 to the 2004 Act.

31. Whilst the decision of the Tribunal is not to adopt any of those courses, they were considered and the guidance has therefore been taken into account. The Respondent has referred to guidance created to deal with overcrowding in connection with Section 326 of the Housing Act 1985. That guidance was not produced by the Respondent.
32. One relevant form of guidance is the Operating Guidance for the Housing Health and Safety System published by the then Office of the Deputy Prime Minister which was the appropriate national authority. It is specifically described as being the appropriate guidance for the purpose of Section 9 of the 2004 Act.
33. Paragraph 3.10 states that the inspector should judge the likelihood of an occurrence within the following 12 months which could result in some medical attention to the relevant vulnerable group. There are tables giving the national average likelihoods. In connect with falls on stairs it says that likelihood involves *"taking account of such matters as the going, the presence or absence of handrails, the state of repair of the treads, variations in tread or rise dimensions, and the available lighting"*. The Hazard Profile for falling on stairs identifies persons over 60 as the most vulnerable age group.
34. Having assessed the likelihood, there is then a second judgment to make. The possible harm outcome has to be considered. In other words, in the present case, if the Tribunal finds that someone from a vulnerable group is likely to fall down the stairs during the next 12 months, what would be the extent of any injury?
35. As is set out in the Order, the second reason for the Order being made is 'the lack of headroom in the rooms on and the stairway to the second floor'. However, the accompanying reasons identify 'crowding and space'. The Operating Guidance, at paragraph 4.30 states that *"for the assessment of crowding, which can only occur in an occupied dwelling, a supplemental stage may be necessary to determine whether the dwelling is crowded, and if so, the severity of the hazard and whether enforcement action should be considered"*.
36. The Respondent's evidence is that when they first knew of the property it was occupied by Adam Mills and Emily Stockwell, who was pregnant. By the 19th May 2006, they had been moved to temporary accommodation with a view to being moved to permanent accommodation elsewhere. This move appears to have been prompted by a visit from the Fire Department who were concerned about fire risk from the shop below. This risk was a reason for the service of the Improvement Notice and the works to do with fire hazard have now been completed.
37. The inspection of the premises which gave rise to the service of the Prohibition Notice was on the 24th May 2006 when all the measurements referred to above were taken. The problem for the Respondent is that when the inspection and, thus, the assessment took place, the property was

not occupied. Although there were items of clothing and furniture in the property when the Tribunal inspected, it did appear that no-one was actually living there.

Enforcement Guidance

38. At the commencement of the new regime, the Office of the Deputy Prime Minister also published 'Housing Conditions: Enforcement Guidance'. At paragraph 4.23 it says *"Authorities should take note that in assessing (the space and crowding) hazard only the risk to the current occupiers is considered"*. At the inspection by the Respondent and by this Tribunal, there were no occupiers.
39. At paragraph 5.15 it says that *"a prohibition order is a possible response to a category 1 hazard. It may prohibit the use of part or all of the premises for some or all purposes, or occupation by particular numbers or descriptions of people"*.
40. Paragraph 5.21 provides examples of situations where such an order might be appropriate and includes *"where the conditions present a serious threat to health or safety but remedial action is considered unreasonable or impractical for cost or other reasons"* and *"to prohibit the use of a dwelling by a specified group where a dwelling is hazardous to some people, but relatively safe for occupation by others. The specified group relates to the class of people for whom the risk arising from the hazard is greater than for any other group, for example, elderly people or those with young children"*. It also refers to controlling the number of people living in a property where there are insufficient facilities or where it is too small for the household's needs.

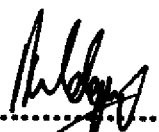
Conclusions

42. The first question the Tribunal has to decide is the nature of the hazard. As has been indicated, the Tribunal considers that overcrowding cannot be a 'hazard' as such because, apart from anything else, the property was not occupied when the assessment was made.
43. As far as the room sizes and heights are concerned, it must be remembered that this is an example of a very old property and many old properties have low ceilings. The hostelry in Hungerford High Street which the members of the Tribunal visited for a cup of coffee after the inspection had a beam in the middle of the bar area which was lower than either ceiling in the bed rooms at the property.
44. Low ceilings are a hazard, but they are an obvious hazard and people tall enough to be affected by such hazards tend to look out for them. If Prohibition Orders were to be made in respect of all properties with ceilings as low as in this property, the country would be deprived of a great deal of housing. The Respondent appears to have confused its powers and duties under Section 326 of the Housing Act 1985 with those under the 2004 Act. The former specifies certain space requirements on an arbitrary basis, principally to set limits on the number of persons who can occupy a

dwelling. The latter requires an assessment to be made of the actual risk of harm in each case. If there are overcrowding issues arising from Section 326 of the 1985 Act, then those must be dealt with separately. However, the Enforcement Guidance makes it clear that if an authority uses its powers under Part 1 of the 2004 Act it will not normally be appropriate to make parallel use of the 1985 Act provisions.

45. The size and ceiling heights of the second floor rooms do not, at Category E, constitute a serious hazard and, in the Tribunal's view, certainly not one which warrants complete prohibition of the use of that floor for residential accommodation. The main hazard here is the staircase. It is so steep with such a narrow and sharp corner at the bottom that people of the vulnerable age groups of the elderly and the very young are likely to fall. If they did fall, then the stairs are so steep with such a severe corner that injury is likely to be serious.
46. It could be said that if less ambulant people had to get out of the property in the event of fire, there is a greater likelihood of a fall. However, the likelihood of this happening within the next 12 months is low, and so this is less relevant to the Tribunal's ultimate decision.
47. The Tribunal also concluded that if the property should ever be occupied by more than 2 adults and a child, the low ceilings and small accommodation would become more of a hazard because movement of a large number of people around the second floor of the property at the same time would make it more likely that occupants would hit their heads and/or fall.
48. The Tribunal agreed with most of the reasons stated by the Respondent for the making and service of the Prohibition Order. As has been said, it is accepted that there is a category 1 hazard and that this cannot be adequately dealt with by a serving a Hazard Awareness Notice. Apart from anything else, such a notice is only served on the owner and may not be seen by any tenant.
49. It is agreed that remedial action cannot be undertaken simply because the property is not reasonably capable of alteration to deal with the hazard. Neither an emergency order nor a suspended order are applicable for an unoccupied property where there is no immediate risk of it being occupied.
50. It is also said by the Respondent that demolition or clearance is not appropriate due to 'the high values of property in West Berkshire and the demand on available units of accommodation in the area'. However, by making and serving this order, the Respondent has, effectively, prevented this property being used as accommodation at all other than as a studio flat.
51. The Tribunal has considered what enforcement provisions would be appropriate bearing in mind that the very design and condition of this property are not really capable of change.

52. An Improvement Notice could have been served to provide for the installation of a handrail above the outer edge of the winders but this would not reduce the risk below Category 1. As far as any other remedies are concerned, it has already been said that the Tribunal accepts the reasons set out by the Respondent.
53. Thus, at the end of the day, we have a Category 1 hazard where the most vulnerable groups are the elderly and young children. The Tribunal considered that a complete prohibition on any occupation of the second floor was not appropriate or reasonable. The most appropriate way of dealing with the hazard is, in the Tribunal's view, to remove the most vulnerable groups from the hazard for most of the time, given that occupiers may well have people from those age groups staying with them from time to time.
54. As to the actual ages, it is obviously appreciated that the choice of under 60 and over 10 could be said to be very arbitrary, but the Tribunal notes that the Guidance identifies persons over 60 as the most vulnerable age group for this hazard. The sole criteria used by the Tribunal was one of risk of injury and the main reason for a fall would be lack of agility and/or inability to prevent oneself falling. In the case of young children it would also be descending the stairs too quickly and not being able to secure a grip of the newel post at the bottom. It is accepted that there are very agile people over 60 and children under 10 who would not be in any great danger. However, doing the best it can, the Tribunal concludes that removing the age groups stated substantially reduces the risk of injury to an acceptable level for adults under 60 and older children.
55. The Tribunal has therefore taken note of the 2 hazards and the guidance and has confirmed the Prohibition Order but only in applying it to the most vulnerable age groups.


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Bruce Edgington
Chair
19th September 2006