

Y TRIBIWNLYS EIDDO PRESWYL

RESIDENTIAL PROPERTY TRIBUNAL

Housing Act 2004 – Prohibition Order

Reference: RPT/0015/22

In the matter of premises at 51 Forrest Road, Cardiff, CF5 1HQ

Applicant: Ruth Winstanley

Respondent: Cardiff Council (represented by Vale of Glamorgan Shared Regulatory Services)

Tribunal: Tribunal Judge Christopher Lester (Legal Chair)
Andrew Lewis FRICS (Surveyor Member)
Dr Angela Ash (Lay Member)

Hearing: 25 January 2024

Reasons and Decision of the Residential Property Tribunal

Case History

1. This is an appeal by the property owner, Ruth Winstanley (“the Applicant”), heard on 25 January against a Notice of a Prohibition Order (“the Prohibition Order”) dated 29 September 2022 which was served upon the Applicant by the local authority, Cardiff Council (“the Respondent”), in respect of the property known as 51 Forrest Road, Cardiff, CF5 1HQ (“the Property”).
2. The Tribunal has already determined, by way of a preliminary issue at Case Management Conferences held on 23 May 2023 and 5 October 2023, 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 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 9 May 2023. The Applicant was present. The Respondent was not present due to a confusion over dates.
5. The subject Property is a mid-terrace 3 bedroom property located in a residential street. Access to the property is from the street. The Property comprises an entrance hallway, front room, rear room, back room and kitchen. Upstairs are three bedrooms and a bathroom.
6. At the time of the Tribunal's inspection, the Property was unoccupied. The Property had a very considerable amount of furniture, boxes and oddments stacked in the rooms.
7. In general, the Property required significant maintenance and repair. At the time of the inspection, it was noted that some repairs were underway, for example, patch repairs of plasterwork. However, the Tribunal noted that the Property still required significant repair works.
8. Following the inspection on 9 May 2023 the case was listed for hearing on the 23rd of May 2023. That hearing was unable to proceed as a final hearing and was converted into a case management review hearing with directions set. These included a direction for the Respondent to provide an expert report on the condition of the Property from an independent chartered building surveyor.
9. The case came back before the Tribunal on 5 October 2023 when the final hearing was unable to proceed, and further directions were set.
10. The case returned to the Tribunal on 25th January 2024 when the final hearing was able to proceed.

The hearing

11. At the hearing on 25th January 2024 the Applicant represented herself. She had attended alongside her adult daughter and son.
12. The Respondent was represented by Mr Grigg, a solicitor for the Respondent. He was assisted by Mr Love who was formerly an environmental health officer for the Respondent. Mr Love now works for a different Council. Mr Love gave evidence for the Respondent.

13. In his evidence he stated that notwithstanding various portions of remedial work that had been undertaken by the Applicant, overall the property remained in an unsafe condition and was not fit for human habitation. He said that in its present condition the property was not safe to return to, and that Category 1 & 2 hazards remained, and that a Prohibition Order was still needed.
14. In cross examination the Applicant stated that she felt a number of the points were petty. The family had lived at the property safely and why did he feel it was so bad. Mr Love responded setting out the following. Penetrating damp remains an issue. Whilst the applicant had undertaken some replastering internally, no works had been undertaken to the exterior to remedy the problem. Accordingly, the new plaster work would suffer from penetrating dampness. Further, the electrics remain in a dangerous condition and rewiring is required. The absence of smoke detectors at the property was also a concern. There was rising damp at the property due to the external ground levels, which had led to the floorboards in the entrance hall rotting, compounded by the absence of subfloor ventilation. The kitchen arrangement was poor for the preparation of food, lacking adequate work surfaces. Externally some of the brick arches above the window openings had failed and not been repaired, and therefore a collapse of the window head was a possibility. The canopy outside the external kitchen door remained and was in poor condition.
15. The Applicant queried how she could fix any of this while there was a Prohibition Order on the Property. Mr Love responded that there was a prohibition preventing human habitation but there was nothing to say that contractors could not enter the Property to fix it. That there was nothing within the order preventing the Applicant from getting builders to fix the issues.
16. At the conclusion of this we heard closing submissions by both parties.
17. The Respondent stated that an Improvement Notice had been issued in July 2021. It was following this that the Respondent had entered the Property and removed over 1 tonne of detritus. The Respondent was then able to see more fully the extent of issues with the property which culminated in the Prohibition Order being issued in September 2022. Some replastering patch repairs have been undertaken which satisfied the Respondent. However, the repairs would not deal with the underlying damp problems. The expert report from August 2023 concludes that the Property was not currently fit for habitation. The necessity of the Prohibition Order remained.
18. The Applicant stated that the Property was a family home. She stated that her family and in particular her son wished to stay there. She set out how her mother had been admitted to a care home in 2013 and passed away there during lockdown. In 2014 her father passed away whilst living at the Property. In the run up to Covid they had received the Property deeds. However, lockdown then took place. She and her family struggled. She contracted Covid and was confined to bed for a considerable time. She knew the Property was damp. It had been empty

before she and her family had moved in. She set out the issues with the rental property they were now living in, and of how these were affecting her family. She stated that she was willing to undertake the repairs and emphasised that she had carried out some repairs already.

19. In response to a question from the panel she accepted that she and her family had moved into the Property about 2015.
20. During closing submissions and in response to questions from the Tribunal the Respondent described the compensation which is potentially available to people in the position of the Applicant. This would be in addition to the Home Loss Payment. These are not matters relevant to the decision of the Tribunal, but they are matters which the Applicant may wish to consider. We say no more on this as it is not the role of the Tribunal to advise the Applicant.

Findings

21. Within the hearing we heard evidence in relation to each point on the Prohibition Order, as set out under Schedule 1 – Deficiencies at Property (see p12 onwards of the 199-page bundle). The Tribunal ensured that all parties knew which room was being referred to at all times.
22. In relation to a number of the points listed on the Deficiencies the Applicant stated that she had performed some remedial works, such as repairing some portions of damaged plaster. On various points the Respondent accepted that remedial works had been undertaken by the Applicant but repeatedly stressed their view that unless the underlying causes of damp were rectified, then the problems would return.
23. A number of the matters set out within the Deficiencies are repeated under different sections.

Damp & Mould Growth (category 1)

24. Ground floor rear room. Damp, blown and perished plaster. The Applicant accepted nothing had been done.
25. Ground floor rear annex room. Damp, blown and perished plaster and damage staining to the ceiling. The Applicant accepted nothing had been done although she felt the plaster was dry but the ceiling still required attention. The Applicant stated there were no leaks from the radiator, merely some rust as the room was damp. She had rubbed the radiator down and repainted it.
26. Ground floor rear annex kitchen. Damp and perished plaster to all walls. The Applicant said she had replastered underneath the kitchen window but accepted she had not dealt with the plaster elsewhere in the room. In relation to the kitchen sink base, the Applicant said she had replaced the trap underneath the sink, and

she maintained that the sink unit chipboard remained strong as she had stood on it. As to the defective floor tiles, the Applicant denied that the tiles were loose or lifting, but the Respondent maintained that the concrete floor slab was damp. The Respondent accepted that the door liner had been replaced between the kitchen and rear annex room. The Respondent accepted that the gas combi boiler had provided hot water from the hot tap to the Tribunal during the property inspection.

27. First floor front bedroom. Mould and perished plaster. The Respondent accepted that the Applicant had performed some repair work of the plaster.
28. First floor rear bedroom. Damp, perished and blown plaster. The Respondent accepted that the Applicant had performed some repair work of the plaster.
29. First floor bathroom. Leaks to floor junctions, radiator corrosion and mould. The Applicant showed photos of mastic type sealant at the junction of the floor and walls. She said this covered three sides of the room but not between the top of the lino and the shower tiles in the shower area. The Respondent accepted that the Applicant had performed some repair work. The Applicant said she had sanded and repainted the radiator and not seen any leaks.
30. First floor annex bedroom. Perished and blown plaster. The Respondent accepted that the Applicant had performed some repair work of the plaster.
31. External boiler condensation pipe. The Applicant accepted this had not been fixed.
32. Rear main wall. Cracked and blown external render. The Applicant accepted that this had not been fixed.
33. Rear main wall areas of cracked and blown external render, with cracks/movement to the external brick arch to the first-floor main rear wall and first floor side rear annex window. The applicant accepted that she had not undertaken any repairs to these items.
34. Rear annex roof. The Respondent accepted that the August 2023 independent chartered building surveyors report considered that the roof dip was long standing and needs to be monitored. The Respondent accepted that the slipped roof tile had been reinstated.

Excess cold (category 1)

35. Corrosion to radiators in ground floor rear annex room, kitchen, first floor bathroom. As stated above the Applicant said that she had sanded and repainted all radiators and not seen any leaks. The Respondent accepted this but stated that without the underlying dampness being remedied corrosion would return as an issue.

36. First floor rear annex bedroom. The Applicant said she had sealed between the edge of the window frame and the wall. However she accepted that the double glazed unit remained cracked and that the seals had failed.
37. First floor rear annex bedroom gas boiler. As stated above during the inspection of the property by the Tribunal the hot water tap had been turned on and worked and so the Tribunal found that the boiler was working.
38. Damaged internal doors to ground floor front and first floor rear annex bedroom. The Applicant accepted these have not yet been fixed.
39. Rear main wall cracked and blown external render. This was covered above, the Applicant accepted no work had been undertaken.

Carbon monoxide and fuel combustion products (category 2)

40. Gas cooker. The Respondent stated they had been unable to test due to items stacked on top of it. The Applicant said that it worked and she had checked it over during the Christmas holidays.
41. Gas boiler in the first floor rear annex bedroom. Referred to above.

Domestic hygiene, pests and refuse (category 2)

42. First floor front, rear, rear annex bedrooms and landing floor covering were worn and damaged including insect damage. The Applicant said the floor covering was to protect the floorboards but accepted that nothing had been replaced.
43. All other issues in this section have been dealt with above.

Food safety (category 1)

44. No adequate or suitable work surfaces and damaged wall unit. The Applicant drew attention to the folding table attached to the side of the sink unit base. The Respondent had not observed this item, but drew to the attention of the Tribunal, that when in place it would block the rear external entrance door to the kitchen.
45. All other issues in this section have been dealt with above.

Personal hygiene, sanitation and drainage (category 2)

46. Kitchen waste pipe. The Respondent accepted that the tap had been replaced, but stated that pipes were damaged both internally and externally.
47. Rear elevation SVP broken external wall bracket. The Applicant accepted that one of the external wall brackets was broken but had been unaware of this.

48. Bathroom door. The Applicant said a door handle but now been provided but there remained no lock.

49. All other issues in this section have been dealt with above.

Falling on level surfaces (category 1)

50. Ground floor hallway. The Applicant said she had replaced floorboards prior to the Prohibition Order and installed new skirting board. The Respondent stated that as part of the Prohibition Order inspection the carpet had been raised and rotten floorboards had been seen and there was also a potentially rotten joist below. The Respondent said the skirting board which was tested in the August 2023 and referred to within the report of the independent chartered building surveyor was found to be damp. The Applicant said this had been replaced but had no photographs to show this. The August 2023 expert surveyor's report also noted a lack of ventilation in the sub floor of the hallway. The Respondent said all of this would lead to an increased risk of rising damp.

51. All other issues in this section have been dealt with above.

Fire (category 1)

52. Electrical wiring. The Applicant accepted nothing had been done in relation to the wiring.

53. Smoke alarms. The Applicant said she had bought some smoke alarms but had not installed them. A photograph produced to the Tribunal and shown to all parties showed a base plate for a smoke alarm on the ground floor hall ceiling but no smoke detector was attached. The Respondent stated no smoke alarms had been present during their inspection.

54. Ground floor front room internal door panel and glazing top panel missing. The Applicant accepted this had not been fixed.

55. Kitchen light fitting not securely fixed and unprotected cabling to extract vent not in working order. The Applicant accepted this had not been replaced and said it just needed a new starter motor. The Respondent stated there was surface mounted unprotected cabling all of which was part of the general wiring concerns of the Respondent. The Applicant said she knew the wiring needed to be replaced but believed the light fitting was working when she had left the house.

56. First floor rear annex bedroom ceiling has polystyrene ceiling tiles covering the existing severely cracked and damaged lath and plaster ceiling. The Applicant said the polystyrene ceiling tiles had been removed and she had repaired the ceiling cracks with plaster. She said the ceiling plaster was now quite solid. The Respondent said the entire ceiling should be replaced and it was unclear how long

any temporary patch repairs by the Applicant would last particularly given the overall issues with the property.

57. First floor rear annex bedroom. Internal door glazing missing. The Applicant accepted this had not been replaced.

Collision and entrapment (category 2)

58. The parties agreed that these issues had been covered above.

Structural collapse and falling elements (category 2)

59. Ground floor rear room lath and plaster ceiling. The Applicant accepted she had not done anything and that this room was untouched.

60. Kitchen annex lath and plaster ceiling. The Applicant said the cracks had been filled in. The Respondent stated that any temporary patch repairs could not be guaranteed and that the whole ceiling needed to be replaced.

61. First floor landing. The Applicant said the cracks had been filled with Polyfilla and there had been no wall movement for 40 years. The Respondent accepted that the wall would need to be monitored.

62. First floor landing perished and missing plaster. The Applicant said this had been fixed which the Respondent accepted but again noted the temporary patch fixes were unlikely to be guaranteed due to the overall problems with the property.

63. First floor rear annex bedroom. Polystyrene ceiling tiles covering severely cracked and damaged plaster ceiling. Front plaster stud partition wall areas blown with loose plaster. The Applicant said the ceiling tiles were now gone. She said nothing had been done to the exposed ceiling or partition wall as she felt there was nothing major wrong with it.

64. Rear elevation lean to canopy. The Applicant accepted nothing had been done about this.

65. Rear annex gable end wall cracks. The Applicant accepted nothing had been done about this.

66. Rear main wall cracked and blown external render. The Applicant accepted nothing had been done about this.

67. The parties agreed all other issues had been dealt with above.

The Law

68. The relevant law is as follows:

69. 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.
70. 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.
71. 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.
72. 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

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

73.1 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, some patch repairs of plasterwork, these were not sufficient to remedy the deficiencies and hazards identified in the Prohibition Notice.

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.

73.2 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.

73.3 Should the 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.

73.4 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 the Applicant had not carried out sufficient 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.

73.5 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.

73.6 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

74. 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: 27th day of February 2024

A handwritten signature in black ink, appearing to be 'Christopher Lester', written in a cursive style.

Christopher Lester
Tribunal Judge Lester