



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

**Case Reference** : **LON/00AB/HPO/2017/0010**

**Property** : **The Bull, Rainham Road South,  
Dagenham, Essex RM10 8AQ**

**Applicant** : **Ms Stella Osunbor**

**Representative** : **Mr Dudley Heslop**

**Respondent** : **London Borough of Barking and  
Dagenham**

**Representative** : **Ms Eliz Bojte, Senior Housing  
Enforcement Officer**

**Type of Application** : **Appeal under the Housing Act 2004  
against a prohibition order**

**Tribunal Members** : **Judge P Korn  
Ms S Coughlin  
Mr J Francis**

**Date and venue of  
Hearing** : **30<sup>th</sup> November 2017 at 10 Alfred  
Place, London WC1E 7LR**

**Deadline for further  
written submissions** : **14<sup>th</sup> December 2017**

**Date of Decision** : **25<sup>th</sup> January 2018**

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**DECISION**

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## **Decisions of the Tribunal**

- (1) The Respondent is ordered to reimburse to the Applicant the whole of the application fee and the whole of the hearing fee, this being in aggregate a total of £300.00.
- (2) The Tribunal makes no order in respect of the £500.00 fee paid by the Applicant to cover the expenses incurred by the Respondent in serving the Prohibition Order.

## **Introduction**

1. On 15<sup>th</sup> August 2017 the Applicant appealed pursuant to paragraph 7(1) of Schedule 2 to the Housing Act 2004 (“**the 2004 Act**”) against a decision of the Respondent to serve a Prohibition Order on her in respect of the Property prohibiting the use of the Property for all purposes.
2. On 30<sup>th</sup> November 2017 the Tribunal inspected the Property in the presence of both parties, and the inspection was followed by a hearing.
3. At the hearing Ms Bojte for the Respondent conceded that, whether or not the service of a Prohibition Order was appropriate at the time when it was served, a Prohibition Order was no longer justified on the basis of the current state of the Property. As the Respondent no longer intended to proceed with the Prohibition Order and would therefore be revoking it, the Applicant agreed in writing to withdraw her appeal against the Prohibition Order.
4. The Applicant then applied for an order that the Respondent reimburse the application and hearing fees and also for an order that the Respondent reimburse the £500.00 fee paid by the Applicant to cover the expenses incurred by the Respondent in serving the Prohibition Order.

## **Respondent’s case on the outstanding cost issues**

5. In relation to the application and hearing fees, the Respondent argues that the Applicant has not been successful in her appeal to quash the Prohibition Order as the Prohibition Order was withdrawn by consent. The application was withdrawn merely on pragmatic terms in the light of the then current factual position, and there has been no unreasonable behaviour on the Respondent’s part.
6. In relation to the charges levied by the Respondent to cover expenses incurred in serving the Prohibition Order, the Respondent states that section 50(7) of the Housing Act 2004 only gives to a tribunal the

power to reduce or quash such a charge where it allows an appeal against the prohibition order itself, and in this case the Tribunal has not allowed an appeal but has instead consented to its being withdrawn. There is also no separate power under the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (“**the Tribunal Rules**”) for a tribunal to order reimbursement of such a charge.

### **Applicant’s case on the outstanding cost issues**

7. In relation to the application and hearing fees, the Applicant disputes the Respondent’s assertion that the Applicant has not been successful in her appeal; on the contrary, the appeal has succeeded in preventing the Prohibition Order from becoming operative. The Applicant also states that the Respondent only agreed to withdraw the Prohibition Order when the Tribunal indicated that it would not be confirming the Prohibition Order.
8. The Applicant also argues that the Respondent has behaved unreasonably. For example, the Respondent was ordered to serve its bundle on the Applicant on 12<sup>th</sup> October 2017 but only did so on 30<sup>th</sup> November 2017.
9. In relation to the charges levied to cover expenses incurred in serving the Prohibition Order, the Applicant states that, although the Prohibition Order was not technically quashed by the Tribunal, the Tribunal made it clear that it would not be confirming the Prohibition Order and its failure to confirm it was in the circumstances akin to quashing it. In addition, there were factors indicating that the Prohibition Order was actually defective.

### **Tribunal’s analysis**

#### **Application and hearing fees**

10. Under paragraph 13(2) of the Tribunal Rules, “*The Tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor*”.
11. As was made clear at the hearing, the Tribunal has serious concerns about the manner in which the Respondent has dealt with this matter and about the strength generally of the Respondent’s case.
12. The evidence indicates that the Respondent served the Prohibition Order on the Applicant without at any stage writing to the Applicant to explain the issues or to engage constructively with the Applicant, and therefore the service of the Prohibition Order was in our view premature in the extreme.

13. In addition, the decision to serve the Prohibition Order was itself unreasonable. Whilst the decision to serve the Prohibition Order looked particularly unreasonable with the benefit of hindsight following the Tribunal's inspection, the Property being in quite good condition at the time of that inspection, the written evidence clearly indicates in our view that the decision to serve a Prohibition Order was disproportionate and wholly misconceived from the start. Furthermore, there is no evidence that the Respondent made any attempt to ascertain the current state of the Property prior to the date of the hearing.
14. In addition, as discussed at the hearing, the wording of the Prohibition Order was seriously defective and possibly defective enough to be void.
15. In the light of the multiple failings on the part of the Respondent it is appropriate to order the Respondent to reimburse to the Applicant the whole of the application fee and the whole of the hearing fee.

*Expenses incurred in serving Prohibition Order*

16. Under section 49(7) of the 2004 Act, "*Where a tribunal allows an appeal against the underlying notice or order ... it may make such order as it considers appropriate reducing, quashing, or requiring the repayment of, any charge under this section made in respect of the notice or order*".
17. In the present case the Tribunal has not allowed an appeal against the Prohibition Order. Instead, the Applicant withdrew her appeal on the basis that the Respondent had agreed to revoke the Prohibition Order. The Applicant has argued that the Tribunal's failure to confirm the Prohibition Order "was in the circumstances akin to quashing it" but we do not agree with this assessment. Whilst the Tribunal may well have gone on to quash the Prohibition Order if the appeal against it had not been withdrawn, the fact remains that the appeal was indeed withdrawn. It is also overstating the position for the Applicant to assert that the Tribunal "indicated that it would not be confirming the Prohibition Order".
18. Section 49(7) of the 2004 Act does not give to tribunals a **stand-alone** power to quash a charge made in respect of a prohibition order; the power applies in circumstances where a tribunal has made a determination allowing an appeal against the prohibition order itself. There is also no stand-alone power contained in the Tribunal Rules to quash such a charge. At first glance one might think that paragraph 13(2) of the Tribunal Rules (already quoted above in paragraph 10) is wide enough to cover such a charge, but it is clear from the wording and context of that provision that it is referring specifically to tribunal fees.

19. Section 230(2) of the 2004 Act grants to tribunals the power “*to give such directions as the tribunal considers necessary or desirable for securing the just, expeditious and economical disposal of the proceedings or any issue raised in or in connection with them*”, but (subject possibly to the point below) this provision does not seem to us to be wide enough to allow a tribunal to order the refund of a prohibition order charge.
20. Notwithstanding the seemingly limited nature of section 230(2) when read by itself, section 230(5) of the 2004 Act is worthy of consideration as it provides some detail as to the what could be covered by section 230(2). In particular, section 230(5)(e) states that “*...the directions which may be given by a tribunal under its general power include (where appropriate) ...directions requiring the payment of money by one party to the proceedings to another by way of compensation, damages or otherwise*”. However, whilst the reference to a direction “requiring the payment of money” is arguably of some assistance to the Applicant, our view – after due consideration and for the reasons given below (coupled with the restrictive wording of section 230(2) itself) – is that this provision is insufficient to give to the Tribunal the power to order the Respondent to reimburse the prohibition order charge paid by the Applicant.
21. First of all, there is the express wording of section 49(7), which only gives a tribunal the power to quash the payment of a prohibition order charge in circumstances where it has allowed an appeal against the prohibition order itself. Parliament could have made section 49(7) wider but it chose not to do so. Therefore, to use sections 230(2) and 230(5) to quash the charge in the absence of a decision allowing the appeal against the prohibition order itself would seem to be a ‘back-door’ way of frustrating the intention of Parliament. Secondly, as regards the actual wording of section 230(5)(e), it is noteworthy (a) that it refers to the “payment of money” rather than to the refund of a charge already paid and (b) that refunding such a charge does not comfortably fit within “compensation” or within “damages” (although obviously it could fit within “otherwise”).
22. Therefore, we consider that the Tribunal does not have the power, on the facts of this case, to order the Respondent to reimburse the fee paid by the Applicant to cover the expenses incurred by the Respondent in serving the Prohibition Order.

**Name:** Judge P Korn

**Date:** 25<sup>th</sup> January 2018

## **RIGHTS OF APPEAL**

- A. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) a written application for permission must be made to the First-tier Tribunal at the regional office dealing with the case.
- B. 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.
- C. If the application is not made within the 28 day time limit, such application must include a request for extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
- D. 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.