



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

<b>Case reference</b>	<b>:</b>	<b>LON/00AD/HPO/2018/0015 &amp; 0017</b>
<b>Property</b>	<b>:</b>	<b>20 Upper Wickham Lane, Welling, Kent DA16 3HE</b>
<b>Applicants</b>	<b>:</b>	<b>Deborah Beckett (Flat C) Sami Bakshish (Flat D)</b>
<b>Respondent</b>	<b>:</b>	<b>London Borough of Bexley</b>
<b>Type of application</b>	<b>:</b>	<b>Appeal in respect of a Prohibition Order</b>
<b>Tribunal</b>	<b>:</b>	<b>Judge Nicol Mr P Roberts Dip Arch RIBA</b>
<b>Date and Venue of Hearing</b>	<b>:</b>	<b>30<sup>th</sup> April 2019 10 Alfred Place, London WC1E 7LR</b>
<b>Date of Decision</b>	<b>:</b>	<b>15<sup>th</sup> May 2019</b>

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**DECISION**

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**The Prohibition Order dated 23<sup>rd</sup> August 2018 is confirmed.**

Relevant legislation is set out in an Appendix to this decision.

**Reasons**

1. The Applicants bought their respective leases of the two subject properties at auction, sight unseen. It turns out that the properties are somewhat unusual. They are small ground-floor studio flats, accessible via a rear alleyway, up a metal staircase to the roof of another flat, across the roof and then down a further staircase to a small area at either end of which is the front door to each flat, Flat C to the rear and Flat D to the front. The flats are in the middle of the building with another flat to the rear of Flat C and commercial premises between Flat D and Upper Wickham Lane so that they are almost entirely enclosed – a ceiling skylight in each flat provides the principal source of natural light. The Tribunal inspected the properties on 11<sup>th</sup> April 2019.

2. On 23<sup>rd</sup> August 2018 the Respondent served a Prohibition Order in respect of each flat. They had a significant number of issues with both properties but they accepted that many of them could be solved with remedial works, such as installing escape route signage and replacing wooden features with fireproof elements. Their reason for serving a Prohibition Order rather than some other form of enforcement, such as an Improvement Notice, came down to three issues:
  - (a) The staircase down from the roof to the flats has a relatively short distance to fit into so that the angle of the rake is steep and the treads are unusually shallow. The Respondent asserted that this presented a category 1 hazard under the Housing Health and Safety Rating System. They further asserted that this was irremediable because there is insufficient space to be able to lessen the angle of the stairs or deepen the treads. The Applicants had lessened the angle to a small degree by installing a turn at the foot of the staircase but this did not change the Respondent's view.
  - (b) The location of the flats necessarily limits the available natural ventilation. The Respondent again found a category 1 hazard which they said was irremediable due to the properties' unusual location.
  - (c) In the event of a fire, occupiers of the subject properties would have to go some distance to reach a place of relative safety at the foot of the metal staircase by the alleyway and even further to reach a place of absolute safety on Coton Road to which the alleyway leads. The Respondent identified this route as too long, aside from any concerns about the nature of the staircase from the roof to the flats. The nature of the flats also meant that any fire, and any attendant smoke, within either of them would travel naturally into the stairwell outside, being part of the escape route itself. Again, the Respondent asserted that the location of the flats meant that this issue was irremediable.
3. Both Applicants appealed to the Tribunal against the Prohibition Order served in relation to their respective flats. The appeals had been due for hearing on 11<sup>th</sup> April 2019 but were adjourned after the First Applicant's counsel's car broke down on the M6 coming from Birmingham. At the adjourned hearing on 30<sup>th</sup> April 2019 she was represented by different counsel, Mr Vincent Scully. The Second Applicant relied principally on the submissions made on behalf of the First Applicant but also made some comments of his own. The Respondent was represented by Mr Guy Atkins of their legal services department. As well as the Applicants themselves, the Tribunal heard evidence from Ms Karen Stevens (the environmental health officer responsible for the Prohibition Order), Mr John Branchett (from the Respondent's building control department) and Mr Colin Cross (a fire safety team leader with the London Fire Brigade).
4. The Applicants acknowledged that the issues identified by the Respondent needed to be addressed. There was no challenge to the Respondent's HHSRS calculations and no evidence that any of the hazards identified had ceased to be category 1. However, the Applicants denied that a Prohibition Order was the appropriate response. The First Applicant argued in particular that it should be replaced by an Improvement Notice and asserted that she would

do whatever was required of her. She pointed to the report of her expert, Mr Ray Palmer of Ranmoor Health & Safety Ltd, who had made a number of recommendations, some of which she has already implemented.

5. In relation to the staircase, the First Applicant suggested that a new staircase could be built which could be less steep and have deeper treads by intruding into her flat. She had no plans or technical specification to demonstrate the feasibility of this suggestion. She was unaware of what consents would be required, including from the freeholder of the building, let alone having sought them. She acknowledged this lack of information but asserted that there was a way around that by putting into an Improvement Notice that she should arrange for the construction of a staircase which complies with the Building Regulations.
6. There is a number of problems with the First Applicant's approach:
  - (a) As a matter of law, it is not appropriate to insert a requirement in an Improvement Notice or Prohibition Order which is insufficiently precise. A recipient of a Notice or Order needs to be able to know what they are supposed to do to comply with that Notice or Order, particularly given that a failure to comply is a criminal offence. A requirement to build a staircase with no more direction than the self-evident one that the Building Regulations should be complied with falls significantly short of the necessary precision.
  - (b) As a matter of evidence, the Tribunal cannot require a party to carry out works unless it is satisfied on the material available to it that that the works are feasible and should achieve the desired objective. In the case of the staircase to the subject properties, the Tribunal cannot see how it is possible to be so satisfied without some form of specification or expert guidance as to what the works would consist of and some evidence that the necessary consents have been or will be obtained.
7. In relation to the ventilation, both Applicants had installed an openable window next to their respective front doors, the one in Flat D somewhat smaller than the one in Flat C. They also pointed to the mechanical ventilation installed in each shower/WC room. Mr Scully asserted that such matters should reduce the hazard below category 1 but he had no expert analysis to back up that submission.
8. In relation to the fire escape route, Ms Stevens said she had explored various options, including with the help of colleagues, such as fire-resistant ("Pyro") glass and mechanisms which would automatically close the skylights in the event of a fire. She said she was unable to find a suitable solution. She was concerned in particular that improving both fire safety and ventilation was incompatible to a degree – for example, the skylights had been sealed shut but this contributed to the lack of ventilation.
9. The Second Applicant had obtained a report dated 16<sup>th</sup> January 2019 from Mr P Bailey of the Fire Safety Engineering Consultancy. Mr Bailey presented options and recommendations which he said, "would make the fire safety arrangements acceptable and provide an adequate escape route and early

warning.” This included “installing fire resistant and auto closing rooflights but alternatively ... fitting fire rated glazing to the windows and the door in question of the other properties.” The Tribunal identified the following problems with his proposals:

- (a) They are presented in principle only. Again, there are no specifications of works. Since Ms Stevens could not, despite her best efforts, find suitable fire rated glazing or auto closing rooflights, the Applicants needed to provide evidence that such materials were available and suitable for these properties.
  - (b) Mr Branchett and Mr Cross both gave evidence that the maximum distance a person escaping fire should have to travel to a place of safety is 12 metres rather than the approximate distance of 35 metres from the front doors of the subject properties to the foot of the metal staircase by the alleyway. Mr Bailey simply did not address this issue. He talked of the time it might take to cover the distance but that is not a complete answer, particularly given that the roof currently retains a number of features which could obstruct those moving across it, including barriers around the skylights and furnishings placed there by the occupiers of Flat A on the first floor who use the roof as a garden.
10. Mr Cross was also concerned about the fire resistance of the roof area which any escaping occupiers or fire fighters would have to cross in the event the fire was in one of the two flats beneath, including Flat C. Mr Bailey raised this issue but there was no evidence as to whether or not the roof had sufficient fire resistance.
11. The First Applicant made two objections to the Respondent’s approach which need to be addressed:
- (a) She bought the flat with a sitting tenant and a professional managing agent in place and so assumed that there were no regulatory issues. Unfortunately, nothing like this can be assumed. Local authority resources are stretched so that they are not able to address all problem properties within their area, even assuming they know of them. This is one of those cases where the Respondent did not know of the properties or of any possible problems with them before a tenant raised a complaint and they took action when they could.
  - (b) The First Applicant and her counsel made frequent reference to whether the Respondent’s actions were consistent. They alleged flaws in other properties and implied that, since the Respondent had not taken action, or at least not issued a Prohibition Order, in respect of those flaws, it was wrong of them to take the action they did in respect of the subject properties. This argument makes no logical sense – it suggests that, unless an authority tackles all problem properties at the same time, that authority cannot take any action at all. In any event, the issue for the Tribunal in this case is how the acknowledged hazards at the subject properties should be addressed, not whether there are any other properties in respect of which similar action should be taken.

12. Mr Scully also made some general points. He pointed out that there is a general shortage of affordable accommodation in London which small units like the subject properties can alleviate. In a somewhat contradictory submission, he also asserted that the Respondent was wrong to raise concerns that, if they did not object to the subject properties, similar sub-standard units could be created elsewhere. However, these points concern the policy background. The Tribunal is concerned only with the appropriate response to the particular problems of the subject properties.
13. The Second Applicant made some points of his own:
- (a) He said he had measured the staircases and the metal staircase from the alleyway, to which the Respondent does not object, would fit in the stairwell. None of the Respondent's witnesses agreed. The Tribunal also thought this unlikely, based on its own observations. The Tribunal asked the Second Applicant if he had evidence of his measurements but he said he did not.
  - (b) He also suggested that occupiers of the subject properties could use the roofs of neighbouring properties as alternative fire escape routes. He said that, in his experience, this was common in London. Both the Tribunal and the Respondent pointed out that it would be necessary to obtain the consent of neighbouring property owners to such arrangements. Again, the Second Applicant had no evidence to support his assertions.
  - (c) He further suggested that, from his experience, mechanical ventilation could provide sufficient ventilation for his flat in place of natural ventilation. However, again he had no evidence that this was either feasible or permissible.
14. In his closing submissions, Mr Atkins stated that the Respondent was sympathetic to the Applicants' situation and were willing to continue talking to the Applicants. While their opinion was that some problems are insurmountable, they were prepared to be shown otherwise if suitable evidence could be presented. For its part, the Tribunal does not doubt the sincerity of either Applicant when they say they are prepared to do whatever it takes to address the Respondent's concerns. However, the fundamental problem for the Applicants in this case is that they have not provided sufficient evidence to satisfy the Tribunal that the acknowledged problems could be addressed. In those circumstances, the Prohibition Order must be confirmed.

**Name:** NK Nicol

**Date:** 15<sup>th</sup> May 2019

## **Appendix of relevant legislation**

### **Housing Act 2004**

#### **1 New system for assessing housing conditions and enforcing housing standards**

- (1) This Part provides–
- (a) for a new system of assessing the condition of residential premises, and
  - (b) for that system to be used in the enforcement of housing standards in relation to such premises.
- (2) The new system–
- (a) operates by reference to the existence of category 1 or category 2 hazards on residential premises (see section 2), and
  - (b) replaces the existing system based on the test of fitness for human habitation contained in section 604 of the Housing Act 1985 (c. 68).
- (3) The kinds of enforcement action which are to involve the use of the new system are–
- (a) the new kinds of enforcement action contained in Chapter 2 (improvement notices, prohibition orders and hazard awareness notices),
  - (b) the new emergency measures contained in Chapter 3 (emergency remedial action and emergency prohibition orders), and
  - (c) the existing kinds of enforcement action dealt with in Chapter 4 (demolition orders and slum clearance declarations).
- (4) In this Part “residential premises” means–
- (a) a dwelling;
  - (b) an HMO;
  - (c) unoccupied HMO accommodation;
  - (d) any common parts of a building containing one or more flats.
- (5) In this Part–
- “building containing one or more flats” does not include an HMO;
- “common parts”, in relation to a building containing one or more flats, includes–
- (a) the structure and exterior of the building, and
  - (b) common facilities provided (whether or not in the building) for persons who include the occupiers of one or more of the flats;
- “dwelling” means a building or part of a building occupied or intended to be occupied as a separate dwelling;
- “external common parts”, in relation to a building containing one or more flats, means common parts of the building which are outside it;
- “flat” means a separate set of premises (whether or not on the same floor)–
- (a) which forms part of a building,
  - (b) which is constructed or adapted for use for the purposes of a dwelling, and

- (c) either the whole or a material part of which lies above or below some other part of the building;

“HMO” means a house in multiple occupation as defined by sections 254 to 259, as they have effect for the purposes of this Part (that is, without the exclusions contained in Schedule 14);

“unoccupied HMO accommodation” means a building or part of a building constructed or adapted for use as a house in multiple occupation but for the time being either unoccupied or only occupied by persons who form a single household.

(6) In this Part any reference to a dwelling, an HMO or a building containing one or more flats includes (where the context permits) any yard, garden, outhouses and appurtenances belonging to, or usually enjoyed with, the dwelling, HMO or building (or any part of it).

(7) The following indicates how this Part applies to flats–

- (a) references to a dwelling or an HMO include a dwelling or HMO which is a flat (as defined by subsection (5)); and
- (b) subsection (6) applies in relation to such a dwelling or HMO as it applies in relation to other dwellings or HMOs (but it is not to be taken as referring to any common parts of the building containing the flat).

(8) This Part applies to unoccupied HMO accommodation as it applies to an HMO, and references to an HMO in subsections (6) and (7) and in the following provisions of this Part are to be read accordingly.

## **2 Meaning of “category 1 hazard” and “category 2 hazard”**

(1) In this Act–

“category 1 hazard” means a hazard of a prescribed description which falls within a prescribed band as a result of achieving, under a prescribed method for calculating the seriousness of hazards of that description, a numerical score of or above a prescribed amount;

“category 2 hazard” means a hazard of a prescribed description which falls within a prescribed band as a result of achieving, under a prescribed method for calculating the seriousness of hazards of that description, a numerical score below the minimum amount prescribed for a category 1 hazard of that description; and

“hazard” means any risk of harm to the health or safety of an actual or potential occupier of a dwelling or HMO which arises from a deficiency in the dwelling or HMO or in any building or land in the vicinity (whether the deficiency arises as a result of the construction of any building, an absence of maintenance or repair, or otherwise).

(2) In subsection (1)–

“prescribed” means prescribed by regulations made by the appropriate national authority (see section 261(1)); and

“prescribed band” means a band so prescribed for a category 1 hazard or a category 2 hazard, as the case may be.

(3) Regulations under this section may, in particular, prescribe a method for calculating the seriousness of hazards which takes into account both the likelihood of the harm occurring and the severity of the harm if it were to occur.

(4) In this section–

“building” includes part of a building;

“harm” includes temporary harm.

(5) In this Act “health” includes mental health.

### **5 Category 1 hazards: general duty to take enforcement action**

(1) If a local housing authority consider that a category 1 hazard exists on any residential premises, they must take the appropriate enforcement action in relation to the hazard.

(2) In subsection (1) “the appropriate enforcement action” means whichever of the following courses of action is indicated by subsection (3) or (4)–

- (a) serving an improvement notice under section 11;
- (b) making a prohibition order under section 20;
- (c) serving a hazard awareness notice under section 28;
- (d) taking emergency remedial action under section 40;
- (e) making an emergency prohibition order under section 43;
- (f) making a demolition order under subsection (1) or (2) of section 265 of the Housing Act 1985 (c. 68);
- (g) declaring the area in which the premises concerned are situated to be a clearance area by virtue of section 289(2) of that Act.

(3) If only one course of action within subsection (2) is available to the authority in relation to the hazard, they must take that course of action.

(4) If two or more courses of action within subsection (2) are available to the authority in relation to the hazard, they must take the course of action which they consider to be the most appropriate of those available to them.

(5) The taking by the authority of a course of action within subsection (2) does not prevent subsection (1) from requiring them to take in relation to the same hazard–

- (a) either the same course of action again or another such course of action, if they consider that the action taken by them so far has not proved satisfactory, or
- (b) another such course of action, where the first course of action is that mentioned in subsection (2)(g) and their eventual decision under section 289(2F) of the Housing Act 1985 means that the premises concerned are not to be included in a clearance area.

(6) To determine whether a course of action mentioned in any of paragraphs (a) to (g) of subsection (2) is “available” to the authority in relation to the hazard, see the provision mentioned in that paragraph.

(7) Section 6 applies for the purposes of this section.

### **8 Reasons for decision to take enforcement action**

(1) This section applies where a local housing authority decide to take one of the kinds of enforcement action mentioned in section 5(2) or 7(2) (“the relevant action”).

(2) The authority must prepare a statement of the reasons for their decision to take the relevant action.

(3) Those reasons must include the reasons why the authority decided to take the relevant action rather than any other kind (or kinds) of enforcement action available to them under the provisions mentioned in section 5(2) or 7(2).

(4) A copy of the statement prepared under subsection (2) must accompany every notice, copy of a notice, or copy of an order which is served in accordance with–

- (a) Part 1 of Schedule 1 to this Act (service of improvement notices etc.),



(b) Part 1 of Schedule 2 to this Act (service of copies of prohibition orders etc.), or  
(c) section 268 of the Housing Act 1985 (service of copies of demolition orders),  
in or in connection with the taking of the relevant action.

(5) In subsection (4)–

- (a) the reference to Part 1 of Schedule 1 to this Act includes a reference to that Part as applied by section 28(7) or 29(7) (hazard awareness notices) or to section 40(7) (emergency remedial action); and
- (b) the reference to Part 1 of Schedule 2 to this Act includes a reference to that Part as applied by section 43(4) (emergency prohibition orders).

(6) If the relevant action consists of declaring an area to be a clearance area, the statement prepared under subsection (2) must be published–

- (a) as soon as possible after the relevant resolution is passed under section 289 of the Housing Act 1985, and
- (b) in such manner as the authority consider appropriate.

## **20 Prohibition orders relating to category 1 hazards: duty of authority to make order**

(1) If–

- (a) the local housing authority are satisfied that a category 1 hazard exists on any residential premises, and
- (b) no management order is in force in relation to the premises under Chapter 1 or 2 of Part 4,

making a prohibition order under this section in respect of the hazard is a course of action available to the authority in relation to the hazard for the purposes of section 5 (category 1 hazards: general duty to take enforcement action).

(2) A prohibition order under this section is an order imposing such prohibition or prohibitions on the use of any premises as is or are specified in the order in accordance with subsections (3) and (4) and section 22.

(3) The order may prohibit use of the following premises–

- (a) if the residential premises on which the hazard exists are a dwelling or HMO which is not a flat, it may prohibit use of the dwelling or HMO;
- (b) if those premises are one or more flats, it may prohibit use of the building containing the flat or flats (or any part of the building) or any external common parts;
- (c) if those premises are the common parts of a building containing one or more flats, it may prohibit use of the building (or any part of the building) or any external common parts.

Paragraphs (b) and (c) are subject to subsection (4).

(4) The notice may not, by virtue of subsection (3)(b) or (c), prohibit use of any part of the building or its external common parts that is not included in any residential premises on which the hazard exists, unless the authority are satisfied–

- (a) that the deficiency from which the hazard arises is situated there, and
- (b) that it is necessary for such use to be prohibited in order to protect the health or safety of any actual or potential occupiers of one or more of the flats.

(5) A prohibition order under this section may relate to more than one category 1 hazard on the same premises or in the same building containing one or more flats.

(6) The operation of a prohibition order under this section may be suspended in accordance with section 23.

## **22 Contents of prohibition orders**

(1) A prohibition order under section 20 or 21 must comply with the following provisions of this section.

(2) The order must specify, in relation to the hazard (or each of the hazards) to which it relates–

- (a) whether the order is made under section 20 or 21,
- (b) the nature of the hazard concerned and the residential premises on which it exists,
- (c) the deficiency giving rise to the hazard,
- (d) the premises in relation to which prohibitions are imposed by the order (see subsections (3) and (4)), and
- (e) any remedial action which the authority consider would, if taken in relation to the hazard, result in their revoking the order under section 25.

(3) The order may impose such prohibition or prohibitions on the use of any premises as–

- (a) comply with section 20(3) and (4), and
- (b) the local housing authority consider appropriate in view of the hazard or hazards in respect of which the order is made.

(4) Any such prohibition may prohibit use of any specified premises, or of any part of those premises, either–

- (a) for all purposes, or
- (b) for any particular purpose,

except (in either case) to the extent to which any use of the premises or part is approved by the authority.

(5) A prohibition imposed by virtue of subsection (4)(b) may, in particular, relate to–

- (a) occupation of the premises or part by more than a particular number of households or persons; or
- (b) occupation of the premises or part by particular descriptions of persons.

(6) The order must also contain information about–

- (a) the right under Part 3 of Schedule 2 to appeal against the order, and
- (b) the period within which an appeal may be made,

and specify the date on which the order is made.

(7) Any approval of the authority for the purposes of subsection (4) must not be unreasonably withheld.

(8) If the authority do refuse to give any such approval, they must notify the person applying for the approval of–

- (a) their decision,

- (b) the reasons for it and the date on which it was made,
- (c) the right to appeal against the decision under subsection (9), and
- (d) the period within which an appeal may be made,

within the period of seven days beginning with the day on which the decision was made.

(9) The person applying for the approval may appeal to the appropriate tribunal against the decision within the period of 28 days beginning with the date specified in the notice as the date on which it was made.

(10) In this Part of this Act “specified premises”, in relation to a prohibition order, means premises specified in the order, in accordance with subsection (2)(d), as premises in relation to which prohibitions are imposed by the order.

## **25 Revocation and variation of prohibition orders**

(1) The local housing authority must revoke a prohibition order if at any time they are satisfied that the hazard in respect of which the order was made does not then exist on the residential premises specified in the order in accordance with section 22(2)(b).

(2) The local housing authority may revoke a prohibition order if—

- (a) in the case of an order made under section 20, they consider that there are any special circumstances making it appropriate to revoke the order; or
- (b) in the case of an order made under section 21, they consider that it is appropriate to do so.

(3) Where a prohibition order relates to a number of hazards—

- (a) subsection (1) is to be read as applying separately in relation to each of those hazards, and
- (b) if, as a result, the authority are required to revoke only part of the order, they may vary the remainder as they consider appropriate.

(4) The local housing authority may vary a prohibition order—

- (a) with the agreement of every person on whom copies of the notice were required to be served under Part 1 of Schedule 2, or
- (b) in the case of an order whose operation is suspended, so as to alter the time or events by reference to which the suspension is to come to an end.

(5) A revocation under this section comes into force at the time when it is made.

(6) If it is made with the agreement of every person within subsection (4)(a), a variation under this section comes into force at the time when it is made.

(7) Otherwise a variation under this section does not come into force until such time (if any) as is the operative time for the purposes of this subsection under paragraph 15 of Schedule 2 (time when period for appealing expires without an appeal being made or when decision to revoke or vary is confirmed on appeal).

(8) The power to revoke or vary a prohibition order under this section is exercisable by the authority either—

- (a) on an application made by a person on whom a copy of the order was required to be served under Part 1 of Schedule 2, or
- (b) on the authority's own initiative.

## **27 Service of copies of prohibition orders etc. and related appeals**

Schedule 2 (which deals with the service of copies of prohibition orders, and notices relating to their revocation or variation, and with related appeals) has effect.

## **SCHEDULE 2**

### **PROCEDURE AND APPEALS RELATING TO PROHIBITION ORDERS**

#### **PART 3**

#### **APPEALS RELATING TO PROHIBITION ORDERS**

##### *Appeal against prohibition order*

**7**

- (1) A relevant person may appeal to the appropriate tribunal against a prohibition order.
- (2) Paragraph 8 sets out a specific ground on which an appeal may be made under this paragraph, but it does not affect the generality of sub-paragraph (1).

**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 (c. 68).

##### *Appeal against decision relating to revocation or variation of prohibition order*

**9**

A relevant person may appeal to the appropriate tribunal against—

- (a) a decision by the local housing authority to vary a prohibition order, or
- (b) a decision by the authority to refuse to revoke or vary a prohibition order.

##### *Powers of tribunal on appeal under paragraph 7*

**11**

- (1) This paragraph applies to an appeal to the appropriate tribunal under paragraph 7.
- (2) The appeal—
  - (a) is to be by way of a re-hearing, but
  - (b) may be determined having regard to matters of which the authority were unaware.
- (3) The tribunal may by order confirm, quash or vary the prohibition order.
- (4) Paragraph 12 makes special provision in connection with the ground of appeal set out in paragraph 8.

**12**

- (1) This paragraph applies where the grounds of appeal consist of or include that set out in paragraph 8.
- (2) When deciding whether one of the courses of action mentioned in paragraph 8(2) is the best course of action in relation to a particular hazard, the tribunal must have regard to any guidance given to the local housing authority under section 9.
- (3) Sub-paragraph (4) applies where—
  - (a) an appeal under paragraph 7 is allowed against a prohibition order made in respect of a particular hazard; and
  - (b) the reason, or one of the reasons, for allowing the appeal is that one of the courses of action mentioned in paragraph 8(2) is the best course of action in relation to that hazard.
- (4) The tribunal must, if requested to do so by the appellant or the local housing authority, include in its decision a finding to that effect and identifying the course of action concerned.

*Powers of tribunal on appeal under paragraph 9*

**13**

- (1) This paragraph applies to an appeal to the appropriate tribunal under paragraph 9.
- (2) Paragraph 11(2) applies to such an appeal as it applies to an appeal under paragraph 7.
- (3) The tribunal may by order confirm, reverse or vary the decision of the local housing authority.
- (4) If the appeal is against a decision of the authority to refuse to revoke a prohibition order, the tribunal may make an order revoking the prohibition order as from a date specified in its order.

*Meaning of “relevant person”*

**16**

- (1) In this Part of this Schedule “relevant person”, in relation to a prohibition order, means a person who is—
  - (a) an owner or occupier of the whole or part of the specified premises,
  - (b) authorised to permit persons to occupy the whole or part of those premises, or
  - (c) a mortgagee of the whole or part of those premises.
- (2) If any specified premises are common parts of a building containing one or more flats, then in relation to those specified premises, “relevant person” means every person who is an owner or mortgagee of the premises in which the common parts are comprised.