



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

**Case Reference** : **CAM/00KC/HPO/2021/0009**

**Property** : **Flat 1, 63 High Street South, Dunstable LU6 3SF**

**Applicant** : **John McGowan**

**First Respondent** : **Central Bedfordshire Council**

**Second Respondent** : **Samantha Jade Comerford**

**Third Respondent** : **Christian Willis Weatherby**

**Application** : **Appeal against a suspended prohibition order  
Sections 20-23 of, and paragraph 7(1) of Schedule 2 to,  
the Housing Act 2004**

**Tribunal Members** : **Judge Stephen Reeder  
Valuer Member Mrs M Krisko BSc (Est Man) FRICS**

**Date of Hearing** : **16 August 2021  
Hearing convened remotely by video platform**

**Date of Decision** : **16 August 2021**

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**DECISION**

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## DECISION

1. **The tribunal confirms the suspended prohibition order dated 5 February 2021 pursuant to paragraph 11(3) in Part 3 of Schedule 2 to the 2004 Act.**
2. **No party costs order is made pursuant to section 29(2) of the Tribunals, Courts and Enforcement Act 2007 and Rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013.**

## REASONS

### The application, parties and issues for determination

3. This is an appeal against a suspended prohibition order dated 5 February 2021 and made by the first respondent local authority in respect of Flat 1, 63 High Street South, Dunstable LU6 3SF. The applicant is the freehold owner of that property and of the building of which it forms a part.
4. The suspended prohibition order dated 5 February 2021 prohibits the use of the property for residential purposes and human habitation from the date when the current tenant vacates or six months from the date of the order, whichever is the sooner, and is made pursuant to section 20 and Part 1 of Chapter 2 to the Housing Act 2004 ('the 2004 Act'). The covering letter states that the order is being served because "we do not see a means of the works being completed while the flat is occupied".
5. The applicant stated that the suspended prohibition order was received on 8 February 2021. The appeal was received by the tribunal on 8 March 2021, and so within the 28-day time limit prescribed by paragraph 10(1) in Part 3 of Schedule 2 to the 2004 Act.
6. The grounds of the appeal are stated in the following terms -

*"It was in appropriate in the circumstances to take such course of action as to serve a prohibition order. The terms of the prohibition order made were inappropriate and unreasonable".*
7. Judge Wyatt made a directions order on 23 April 2021. Pursuant to that order and having regard to a subsequent application from them as interested parties the second and third respondents were joined as parties. They were the tenants of the property at the time the suspended prohibition order was served in February 2021. The applicant and first respondent have confirmed to the tribunal that the second and third respondents vacated the property in July 2021.
8. Judge Wyatt order on 23 April 2021 made directions in respect of any expert evidence. No party has made an application to rely on any expert evidence pursuant to that order.
9. This appeal is heard by the tribunal by way of a re-hearing and may be determined having regard to matters of which the first respondent authority were unaware, in accordance with paragraphs 11(2)(a),(b) in Part 3 of Schedule 2 to the 2004 Act.
10. The tribunal may by order confirm, quash or vary the prohibition order pursuant to paragraph 11(3) in Part 3 of Schedule 2 to the 2004 Act.

## **The hearing**

11. This has been a remote video hearing with the parties' consent. The form of remote hearing was V:CVPREMOTE. The Covid-19 related risks mitigated against a congregated in-person hearing. Such a hearing was not practicable and the parties and tribunal considered that the nature of the matter before it and the related evidence was such that a remote hearing was appropriate.
12. The applicant John McGowan has attended the hearing. He has been represented by Sebastian Read of counsel.
13. Bethany Goodlad (environmental health officer), Brian McCrossan (technical officer) and Jonathan Arnold (private sector housing manager) have attended from the respondent local authority. That authority has been represented by Emma Harris of counsel.
14. The second and third respondents have not attended the hearing.
15. The tribunal has had the benefit of a voluminous hearing bundle of 3 lever arch files comprising 1498 pages. That bundle includes the grounds for appeal and supporting witness statement from the applicant (with a substantial documentary exhibit) and the first respondent authority's two witness statements (again, with a substantial documentary exhibit) and written response to the grounds of appeal. The tribunal has read the documentary evidence with care, and a number of those documents have been referred to by one or more of the parties and so further read and considered during the hearing.
16. Mr Read of counsel has helpfully presented the applicant's case with vigour and clarity. The applicant John McGowan adopted his witness statement, gave further updating oral evidence at the request of his counsel, and has answered questions from the respondent's counsel and from the tribunal.
17. Ms. Harris of counsel has helpfully presented the respondent's case with similar vigour and clarity. Bethany Goodlad (environmental health officer for the respondent and the decision-maker in relation to the suspended prohibition order) adopted her witness statement, gave further updating oral evidence at the request of her counsel, and has answered questions from the applicant's counsel and from the tribunal.
18. The tribunal is grateful to both witnesses and advocates and for the well-ordered presentation of evidence and argument respectively.

## **The law**

19. The Housing Act 2004 addresses the enforcement of housing standards and includes the following relevant provisions –

### ***Enforcement of housing standards***

*Section 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.*

#### *Section 6 Category 1 hazards: how duty under section 5 operates in certain cases*

*(1) This section explains the effect of provisions contained in subsection (2) of section 5.*

*(2) In the case of paragraph (b) or (f) of that subsection, the reference to making an order such as is mentioned in that paragraph is to be read as a reference to making instead a determination under section 300(1) or (2) of the Housing Act 1985 (c. 68) (power to purchase for temporary housing use) in a case where the authority consider the latter course of action to be the better alternative in the circumstances.*

*(3) In the case of paragraph (d) of that subsection, the authority may regard the taking of emergency remedial action under section 40 followed by the service of an improvement notice under section 11 as a single course of action.*

*(4) In the case of paragraph (e) of that subsection, the authority may regard the making of an emergency prohibition order under section 43 followed by the service of a prohibition order under section 20 as a single course of action.*

*(5) In the case of paragraph (g) of that subsection—*

- (a) any duty to take the course of action mentioned in that paragraph is subject to the operation of subsections (2B) to (4) and (5B) of section 289 of the Housing Act 1985 (procedural and other restrictions relating to slum clearance declarations); and*
- (b) that paragraph does not apply in a case where the authority have already declared the area in which the premises concerned are situated to be a clearance area in accordance with section 289.*

*Section 7 Category 2 hazards: powers to take enforcement action*

*(1) The provisions mentioned in subsection (2) confer power on a local housing authority to take particular kinds of enforcement action in cases where they consider that a category 2 hazard exists on residential premises.*

*(2) The provisions are—*

- (a) section 12 (power to serve an improvement notice),*
- (b) section 21 (power to make a prohibition order),*
- (c) section 29 (power to serve a hazard awareness notice),*
- (d) section 265(3) and (4) of the Housing Act 1985 (power to make a demolition order), and*
- (e) section 289(2ZB) of that Act (power to make a slum clearance declaration).*

*(3) The taking by the authority of one of those kinds of enforcement action in relation to a particular category 2 hazard does not prevent them from taking either—*

- (a) the same kind of action again, or*
- (b) a different kind of enforcement action,*

*in relation to the hazard, where they consider that the action taken by them so far has not proved satisfactory.*

*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.*

## *Section 9 Guidance about inspections and enforcement action*

- (1) *The appropriate national authority may give guidance to local housing authorities about exercising—*
- (a) their functions under this Chapter in relation to the inspection of premises and the assessment of hazards,*
  - (b) their functions under Chapter 2 of this Part in relation to improvement notices, prohibition orders or hazard awareness notices,*
  - (c) their functions under Chapter 3 in relation to emergency remedial action and emergency prohibition orders, or*
  - (d) their functions under Part 9 of the Housing Act 1985 (c. 68) in relation to demolition orders and slum clearance.*
- (2) *A local housing authority must have regard to any guidance for the time being given under this section.*
- (3) *The appropriate national authority may give different guidance for different cases or descriptions of case or different purposes (including different guidance to different descriptions of local housing authority or to local housing authorities in different areas).*
- (4) *Before giving guidance under this section, or revising guidance already given, the Secretary of State must lay a draft of the proposed guidance or alterations before each House of Parliament.*
- (5) *The Secretary of State must not give or revise the guidance before the end of the period of 40 days beginning with the day on which the draft is laid before each House of Parliament (or, if copies are laid before each House of Parliament on different days, the later of those days).*
- (6) *The Secretary of State must not proceed with the proposed guidance or alterations if, within the period of 40 days mentioned in subsection (5), either House resolves that the guidance or alterations be withdrawn.*
- (7) *Subsection (6) is without prejudice to the possibility of laying a further draft of the guidance or alterations before each House of Parliament.*
- (8) *In calculating the period of 40 days mentioned in subsection (5), no account is to be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.*

## *Section 10 Consultation with fire and rescue authorities in certain cases*

- (1) *This section applies where a local housing authority—*
- (a) are satisfied that a prescribed fire hazard exists in an HMO or in any common parts of a building containing one or more flats, and*
  - (b) intend to take in relation to the hazard one of the kinds of enforcement action mentioned in section 5(2) or section 7(2).*
- (2) *Before taking the enforcement action in question, the authority must consult the fire and rescue authority for the area in which the HMO or building is situated.*
- (3) *In the case of any proposed emergency measures, the authority's duty under subsection (2) is a duty to consult that fire and rescue authority so far as it is practicable to do so before taking those measures.*
- (4) *In this section—*
- *“emergency measures” means emergency remedial action under section 40 or an emergency prohibition order under section 43;*
  - *“fire and rescue authority” means a fire and rescue authority under the Fire and Rescue Services Act 2004 (c. 21);*

- “prescribed fire hazard” means a category 1 or 2 hazard which is prescribed as a fire hazard for the purposes of this section by regulations under section 2.

### **Prohibition orders**

#### *Section 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.

#### *Section 21 Prohibition orders relating to category 2 hazards: power of authority to make order*

(1) If—

(a) the local housing authority are satisfied that a category 2 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, the authority may make a prohibition order under this section in respect of the hazard.

(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 subsection (3) and section 22.

(3) Subsections (3) and (4) of section 20 apply to a prohibition order under this section as they apply to one under that section.

- (4) A prohibition order under this section may relate to more than one category 2 hazard on the same premises or in the same building containing one or more flats.*
- (5) A prohibition order under this section may be combined in one document with an order under section 20 where they impose prohibitions on the use of the same premises or on the use of premises 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.*

## *Section 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.*

### *Section 23 Suspension of prohibition orders*

*(1) A prohibition order may provide for the operation of the order to be suspended until a time, or the occurrence of an event, specified in the order.*

*(2) The time so specified may, in particular, be the time when a person of a particular description begins, or ceases, to occupy any premises.*

*(3) The event so specified may, in particular, be a notified breach of an undertaking accepted by the local housing authority for the purposes of this section from a person on whom a copy of the order is served.*

*(4) In subsection (3) a “notified breach”, in relation to such an undertaking, means an act or omission by such a person—*

*(a) which the local housing authority consider to be a breach of the undertaking, and*

*(b) which is notified to that person in accordance with the terms of the undertaking.*

### *Section 24 Operation of prohibition orders*

*(1) This section deals with the time when a prohibition order becomes operative.*

*(2) The general rule is that a prohibition order becomes operative at the end of the period of 28 days beginning with the date specified in the notice as the date on which it is made.*

*(3) The general rule is subject to subsection (4) (suspended orders) and subsection (5) (appeals).*

*(4) If the order is suspended under section 23, the order becomes operative at the time when the suspension ends.*

*This is subject to subsection (5).*

*(5) If an appeal is brought against the order under Part 3 of Schedule 2, the order does not become operative until such time (if any) as is the operative time for the purposes of this subsection under paragraph 14 of that Schedule (time when order is confirmed on appeal, period for further appeal expires or suspension ends).*

*(6) If no appeal against a prohibition order is made under that Part of that Schedule within the period for appealing against it, the order is final and conclusive as to matters which could have been raised on an appeal.*

*(7) Sections 584A and 584B of the Housing Act 1985 (c. 68) provide for the payment of compensation where certain prohibition orders become operative, and for the repayment of such compensation in certain circumstances.*

### *Section 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.

#### *Section 26 Review of suspended prohibition orders*

- (1) The local housing authority may at any time review a prohibition order whose operation is suspended.
- (2) The local housing authority must review a prohibition order whose operation is suspended not later than one year after the date on which the order was made and at subsequent intervals of not more than one year.
- (3) Copies of the authority's decision on a review under this section must be served on every person on whom a copy of the order was required to be served under Part 1 of Schedule 2.

#### *Section 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 PART 3 Appeals relating to prohibition orders*

##### ***Appeal against prohibition order***

###### *Paragraph 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).*

#### *Paragraph 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.*

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

#### *Paragraph 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.*

### ***Time limit for appeal***

#### *Paragraph 10*

*(1) Any appeal under paragraph 7 must be made within the period of 28 days beginning with the date specified in the prohibition order as the date on which the order was made.*

*(2) Any appeal under paragraph 9 must be made within the period of 28 days beginning with the date specified in the notice under paragraph 3 or 5 as the date on which the decision concerned was made.*

*(3) The appropriate tribunal may allow an appeal to be made to it after the end of the period mentioned in sub-paragraph (1) or (2) if it is satisfied that there is a good reason for the failure to appeal before the end of that period (and for any delay since then in applying for permission to appeal out of time).*

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

#### *Paragraph 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.*

#### *Paragraph 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.*

### *Paragraph 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.*

## **The property**

20. The parties did not request a property inspection and the tribunal did not consider that one was necessary and proportionate given the issues before it and the narrative evidence, floor plans and photographic evidence provided in the hearing bundles.
21. The relevant property is a flat located on the basement floor of a four-storey building owned by the applicant which was previously used as office accommodation but was converted into four flats for residential occupation in 2008. The flat is approximately 36-37m<sup>2</sup>. The kitchen/living/sleeping area is an open-plan bedsit or studio arrangement with a separate bathroom and WC (separated by an internal partition wall). As presently arranged the bathroom is to the rear right-hand corner. The bedroom area is situated in the remainder of the rear section. The kitchen is situated in the middle section. The living area is situated in the front section. The only source of natural light and ventilation is in that front section and comprises two windows at the bottom of a light well at the front of the building. That lightwell closely abuts the ground level public pathway and the railing fence forming a boundary to the same. Neither of those windows can be opened sufficiently to afford a means of exit or escape. There is one exit door to the front left-hand corner of the property. The three floors above the property in the rest of the building are in use as residential dwellings.

## **Evidence, discussion and determinations**

### **The hazards identified in the order**

22. Schedule 1 to the suspended prohibition order dated 5 February 2021 identified category 1 hazards in relation to lighting, sanitation and drainage, and fire hazards. That schedule further identifies category 2 hazards in relation to damp and mould growth.

### **The remedial action required by the order**

23. Schedule 2 to the suspended prohibition order states the remedial action required for it to revoke the order which action comprises (adopting the numbering of the schedule) –

- (1) Submitting architect drawings of a redesign of the layout of the flat to ensure it has natural light to an equivalent of 1/10<sup>th</sup> of the floor area of the habitable area, in order to provide sufficient natural light to complete normal living activities without the use of artificial light.
- (2) Ensure there is at least 1 gravity fed toilet to the property with drainage installed in accordance with the Building Regulations (document H).
- (3) Install a fire alarm system to the common parts of the building as described.
- (4) Install a smoke alarm in the flat as described.
- (5) Install an emergency lighting system to the common parts of the building as described.
- (6) Carry out work necessary to ensure the 30-minute fire integrity of all doors that open onto a fire escape route.
- (7) Install an automatic opening vent to the head of the stairs as described.
- (8) Ensure the electric meters and supply in the ground floor hallway are contained within a 30-minute fire resistant casing.
- (9) Submitting architect drawings of a redesign of the layout of the flat so that anyone in the sleeping or living space is not required to pass the open plan kitchen to escape the flat in the event of fire.
- (10) Installing a window which is of sufficient size and design to be an escape window as described.
- (11) Submitting architect drawings of a redesign of the layout of the flat which provide for natural and artificial ventilation to comply with the Building Regulations (document H).

### **The grounds of the appeal**

24. The grounds of the appeal are stated in the following terms -

“It was inappropriate in the circumstances to take such course of action as to serve a prohibition order. The terms of the prohibition order made were inappropriate and unreasonable”.

### **The issues identified in the directions order for the parties’ evidence to address**

25. The directions order on 23 April 2021 identified the issues for determination by the tribunal (and so for the parties to address in their evidence) as –

- a. Has the first respondent council correctly completed the necessary steps in respect of issuing the suspended prohibition order?
- b. Do hazards exist and, if so, of what category?
- c. Should the first respondent council have taken enforcement action in respect of such hazards?
- d. If so, what enforcement action is appropriate (hazard awareness notice, improvement notice, prohibition order) ?
- e. If a suspended prohibition order is the correct action, then do the contents of the order made comply with the requirements of section 22 of the 2004 Act?
- f. Should the tribunal confirm, quash or vary the suspended prohibition order and/or should the operation of the order be further suspended for any reason, in accordance with section 23 of the 2004 Act ?

### **The applicant's written evidence**

26. The applicant's witness statement dated 21 July 2021 raises the following issues –
- a. Service of the suspended prohibition order was hastily done and unnecessary following the inspection in January 2021
  - b. Contractors were already on-site carrying works on the day of the inspection
  - c. The applicant was willing to carry out works expeditiously
  - d. The suspended prohibition order was unnecessary and an Improvement or Hazard Awareness notice would have been sufficient
  - e. The tenants failed to give access which delayed works
  - f. The tenants made defect reports around the time rent was due and “each time there was no actual issue”
  - g. The natural light/windows issue was not an issue when conversion planning permission was given in 2007 and so “should not be an issue today”
  - h. He has obtained architects drawings to carry out works during vacant possession to address bathroom/WC, means of fire escape and ventilation.

### **The first respondent's written evidence**

27. On behalf of the first respondent a statement from Brian McCrossan (technical officer) dated 6 May 2021 addresses the inspection of the property on 26 January 2021 and identification of hazards therein by application of the Housing Health and Safety Rating System (the ‘HHSRS’), and exhibits a floor plan of the property. Mr McCrossan's evidence has not been challenged. Nothing arises from this as it is apparent that his colleague Bethany Goodlad was the lead officer dealing with the property and the ultimate decision-maker in respect of the service of the suspended prohibition order.
28. On behalf of the first respondent a statement from Bethany Goodlad (environmental health officer) dated 7 May 2021 addresses her initial inspections of the property on 18 January 2021, her formal entry and inspection of the property and of the common parts of the building (pursuant to section 239 of the 2004 Act) on 26 January 2021 in the company of Mr McCrossan, the completion of a HHSRS assessment, her consultations with the first respondent's building control team and with the Bedfordshire Fire and Rescue Service, and the drafting and service of the suspended prohibition notice and attached schedules.
29. The first respondent authority's ‘response to the grounds of appeal’ states that the nature and extent of the necessary works to the flat which is situated in a building in a town centre location could not be completed with tenants in occupation. As the hazards did not pose an immediate risk to the occupants it was considered appropriate to suspend the order for 6 months to allow the occupants to find alternative accommodation as they had been in occupation for 2 years, and an immediate prohibition order would have only given them 28 days to vacate. An improvement notice would have allowed them to remain in occupation and so the required works could not have been carried out.

### **Oral evidence, argument & determinations**

30. On behalf of the applicant Mr Reid expanded upon the grounds of the application in his opening. He submitted that there are no accepted hazards for the purposes of HHSRS in respect of light, ventilation and fire and that any hazard arising from sanitation and drainage has been remedied by the replacement of the previous domestic Sani-Flow system with a ‘commercial grade’ Sani-Flow system. He submitted that, notwithstanding this position the applicant was prepared to carry out the works in Schedule 2 to the suspended prohibition notice. Mr Reid further submitted that it was not necessary or reasonable to serve a prohibition notice as the applicant had received other types of housing standards enforcement notices and had always complied with them so that an improvement

notice would have been appropriate and sufficient step as his experience and reputation as a landlord means he could be trusted to carry out the required works

31. A preliminary evidential issue was raised by the respondent at the outset of the hearing following the opening address for the applicant insofar as it appeared to be suggested that there had been no need to serve a prohibition notice in respect of any of his properties previously. On behalf of the respondent it was put to the applicant that it was a matter of provable record that he has previously been served with probation notices on 18 March 2021 in respect of four properties at flats 2, 4, 7 and 8 at 43-45 High Street North. The applicant accepted this.
32. At the outset of the hearing the tribunal established with the parties that second and third respondent tenants had occupied the property in December 2018 and moved out following a possession order being granted in July 2021.
33. At the outset of the hearing the tribunal directed the parties to an email dated 7 July 2021 from Bethany Goodlad to the applicant and others which records the outcome of a re-inspection of the property on 2 July 2021. It confirms that the works to the common areas of the building specified in schedule 2 of the suspended prohibition order had been completed. It confirms that none of the specified works relating to the property had been carried out. Both parties confirmed during the hearing that this was the position at the re-inspection and remained the position at the date of the hearing.
34. That email states “as the required works could not be completed while a tenant occupies the property and we are uncertain that it would ever be feasible to complete some of the required works to ensure that there is sufficient natural light and ventilation due to the surrounding properties we therefore remain of the view that the only course of action available to us is the prohibition order to remain in place on the property”.
35. The applicant confirms that he has been the registered proprietor of the building since 28 November 2007. The building was in use as commercial offices but had the benefit of a grant of planning permission dated 27 March 2007 to convert the building to residential use as four flats. The applicant carried out the conversion in 2008 and let the resulting flats. He contends that it is neither necessary nor reasonable to serve a suspended prohibition order in February 2021 when the conversion was carried out in accordance with that grant of planning permission. He states that he was entitled to and did rely upon that grant of permission and so did not obtain any further planning or building regulation or control approval of the conversion whether during the works, at the time of completion of the works, prior to letting the flats created or at any time since. When questioned the applicant accepted that he did know that he could and should have sought building control approval at the completion of the conversion or before letting the resulting flats.
36. The tribunal considers that the March 2007 planning permission, whilst relevant to the identification of and response to a hazard, does not provide a ‘defence’ against the hazards identified on inspection in 2021 as the applicant contends. As Ms Goodlad stated more than once whilst being questioned, she inspected the property at a point in time and assessed any potential hazards identified at that time in accordance with the HHSRS in force at that time. She determined the appropriate cause of action by application of the statutory scheme for housing standards enforcement in the Housing Act 2004. She was clear that in doing so she knew both of the 2007 planning permission and of the lack of any building control approval which caused the property to be considered as a HMO pursuant to section 257 of the 2004 Act.
37. The applicant by his counsel continues to dispute the identified hazards but has not challenged the HHSRS calculations nor adduced any expert or technical evidence (despite the directions order made on 23 April 2021) nor put forward any considered forensic challenge to the first respondent’s HHSRS hazard evidence despite describing the calculations and worked examples as “artificial” and

stating that “the degree of risk is overstated”. Ms Goodlad has provided her analysis, calculations and worked examples in evidence and all seem appropriate. In the circumstances the tribunal accepts her evidence and so accepts that the conditions found at the property give rise to the hazards as assessed by reference to the HHSRS.

38. The tribunal considers that the applicant’s argument that service of the suspended prohibition notice as opposed to a hazard awareness or improvements notice was not necessary or reasonable is undermined by him disputing the identified hazards up to and including this hearing when questioned directly.
39. In evidence the applicant accepted that the means of escape in the event of fire could be a hazard but contended that it is not in this case because a fire could be easily seen and a swift exit made given the small internal size and open plan layout of the property. This is spurious given that when questioned he accepted that someone in the sleeping area in the rear of the property would have to walk through the kitchen in the middle area to reach the door at the front corner to exit, or otherwise to exit using the front windows. He accepted also that the windows cannot be opened wide enough to provide a means of escape as they abut a wall rising to street level.
40. In evidence the applicant accepted that the lack of ventilation could be a hazard but he proposed to install mechanical ventilation. He was directed to the email dated 29 January 2021 from the first respondent’s principal building control surveyor as part of Ms Goodlad’s formal consultation with the building control team. This details the ventilation requirements which give rise to the hazard identified. That evidence was not disputed.
41. In evidence that applicant accepted that escape of waste and effluent into the basement property could be a hazard but was not as he had installed a saniflo macerator and the cause of waste flooding back into the premises was the tenants deliberately turning this off or blocking it. The tribunal considers that it is most unlikely that tenants would deliberately create a risk of waste flooding into a basement property they occupy and the applicant’s contention is not supported by any persuasive evidence at all. Further, the applicant was again directed to the email dated 29 January 2021 from the first respondent’s principal building control surveyor as part of Ms Goodlad’s formal consultation with the building control team. This details the WC requirements which give rise to the hazard identified. That evidence was not disputed.
42. In relation to natural light, when questioned the applicant accepted that the basement location of the premises and lack of light source beyond the two windows to the front elevation directly facing a wall up to street level mean that you would need to use artificial light to safely cook in the kitchen during daylight hours.
43. In relation to each of these issues the tribunal considers that the applicant’s arguments and evidence do not provide any sufficient evidential basis to determine that the hazards do not exist as identified by Ms Goodlad, nor that it was unnecessary or unreasonable to serve the suspended prohibition notice.
44. In support of his contention that the fire risk (ie. the means of escape in the event of fire in the property or building) hazards identified pursuant to the HHSRS were not such that it was necessary or reasonable to serve a suspended prohibition notice, the applicant relies upon a first risk assessment report dated 24 June 2021 and produced pursuant to the Regulatory Reform (Fire Safety) Order 2005 by Talha Patel of Messrs ‘Risk Assessment Ltd’. Once analysed during the hearing it is apparent that this assessment is of the retained and/or common parts of the building only and the assessor did not enter and assess any of the flats in the building including the instant property. The report includes a number of relevant points (adopting the numbering of the report). The landlord must confirm the evacuation strategy (1.08). It was not possible to assess the fire compartmentation within the premises (16.01). The landlord should ensure that the fire and rescue service have carried out



inspection of the premises (24.10 & Action Plan). The fire exit door within the basement is of a small unreasonable height and egress route to a safe area is obstructed by the concrete structure of the premises...it is advised that the secondary escape route is only utilised if there is no access to the ground floor common area (15.25 observations). The tribunal considers that this report supports rather than undermines the service of the suspended prohibition notice. The importance of fire compartmentation and means of egress or evacuation identified in this report correspond with the hazards identified for the purposes of that notice. The applicant did not arrange any inspection by the Bedfordshire Fire and Rescue Service. On the evidence before the tribunal it is apparent that there is no adequate evacuation strategy due in part to the restrictions posed by the property and by its location in the basement of the building.

45. The applicant contends that Ms Goodlad was “overly zealous” herself in deciding to serve a suspended prohibition order. When questioned the applicant was directed to documentary correspondence in the bundle which showed Bethany Goodlad’s formal consultation with the first respondent’s building control team and with the Bedfordshire Fire and Rescue Service prior to issuing the suspended prohibition order. He accepted that this consultation had taken place. He accepted the responses of the consultees, stating “I have to agree with the letters in front of me”. Both supported the need to serve a suspended prohibition order. The tribunal considers that Ms Goodlad’s procedural and substantive methodology was sound and cannot properly be described as “overly zealous”.
46. The tribunal considers that the applicant’s argument that service of the suspended prohibition notice as opposed to a hazard awareness or improvements notice was not necessary or reasonable is undermined by him expressly accepting when questioned that the identified works to the premises could not be carried out with the tenants in occupation. Further, a hazard awareness notice would only inform the applicant of the hazards and would not require them to be remedied with any deadline for compliance. That is not appropriate given the tribunal’s determinations that the hazards are as identified by Ms Goodlad and stated in the notice served. Further, an improvement notice would require works to be completed in a defined timescale which may have to be carried out with tenants in occupation. As Ms Goodlad stated when questioned service of an improvement notice would likely “be setting up the applicant to fail and so be at risk of prosecution for non-compliance” given the email dated 7 July 2021 following the re-inspection on 2 July 2021 which states “as the required works could not be completed while a tenant occupies the property and we are uncertain that it would ever be feasible to complete some of the required works to ensure that there is sufficient natural light and ventilation due to the surrounding properties we therefore remain of the view that the only course of action available to us is the prohibition order to remain in place on the property”. The tribunal considers that an improvement notice is not appropriate.
47. The applicant contends that the first respondent should not have served the suspended prohibition order as he was and is willing to carry out the identified works to the premises. He relies upon a document sent to the first respondent on 8 July 2021 by his architect (Messrs KVB architects) some months after the notice was served. This is a single page handwritten proposed plan for works to install a new window in the front elevation, to enclose the kitchen area by a wall and to install a second WC on the ground floor for use by occupiers of the property. In her oral evidence to the tribunal Ms Goodlad gave a detailed account by reference to the case file of her correspondence in reply to the architect asking him to provide a copy of his scale plans, horizontal aspect, calculations in respect of light and ventilation, fire separation provisions for any proposed mechanical ventilation installation, and any proposals for a gravity drainage chamber and system. She provided the architect with photographs of the front elevation and internal layout of the property illustrating the concerns raised and hazards identified. She provided the architect with the relevant parts of the HHSRS guidance. She gave an account of a subsequent telephone conversation with the architect during which they discussed his handwritten drawing and her requests for information following receipt of the same. She stated that the architect promised to provide the requested information and calculations. She further stated that no response or further contact at all has been received from the

architect. This evidence was not challenged on behalf of the applicant. The applicant accepts that none of the proposed works to the premises have been carried out at the date of this hearing. The tribunal considers that this undermines his argument that service of the notice was not necessary on the ground that he always was and remains willing to carry out those works.

48. The applicant contends that service of the suspended prohibition order was not necessary as, whilst he accepts that the works could not be carried out with the tenants in occupation of the premises, he could and would have moved them to alternative accommodation if necessary. The notice was received on 8 February 2021. There is no evidence that prior to that date or at any time since that date as he ever approached the first respondent (or indeed the tenants) with such a proposal. The tribunal does not find this argument at all persuasive.
49. Having regard to the arguments made, evidence considered and determination made the tribunal confirms the suspended prohibition order dated 5 February 2021 pursuant to paragraph 11(3) in Part 3 of Schedule 2 to the 2004 Act.
50. No party has made any application in relation to costs. In considering whether to exercise its power to award costs the tribunal would have careful regard to section 29(2) of the Tribunals, Courts and Enforcement Act 2007 and Rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 read against the overriding objective in Rule 3 of the 2013 Rules. The tribunal would also be mindful of the guidance given by the Chamber President and Deputy President in *Willow Court Management Ltd v Alexander, Sinclair v Sussex Gardens RTM, Stone v Hogarth Rd Management Ltd [2016] UKUT 0290 (LC)*. The tribunal has in any event considered whether any party has acted unreasonably in bringing, defending or conducting the proceedings and concluded not. No party costs order is made.

**Stephen Reeder**  
**Judge of the First Tier Tribunal, Property Chamber**

**16 August 2021**

## ANNEX

### RIGHT OF APPEAL

- a. **Rule 36(2) of the Tribunal Procedure (First-tier tribunal) (Property Chamber) Rules 2013 requires the tribunal to notify parties about any right of appeal they may have from its decision.**
- b. **If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to this First-tier tribunal at the regional office which has been dealing with the case.**

- c. The application for permission to appeal must arrive at the regional office within 28 days after the date on which the tribunal sends the written reasons for the decision to the person making the application.**
- d. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.**
- e. 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), must state the grounds of appeal, and must state the result the party making the application is seeking.**
- f. If the First-tier tribunal refuses permission to appeal, a further application for permission may be made directly to the Upper Tribunal (Lands Chamber).**