



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

<b>Case reference</b>	:	<b>CAM/11UC/HPO/2020/0002</b>
<b>HMCTS code (audio, video, paper)</b>	:	<b>V: CVPREMOTE</b>
<b>Property</b>	:	<b>Specified rooms at 68a Broad Street, Chesham, Buckinghamshire HP5 3DX</b>
<b>Applicant</b>	:	<b>Usman Ghani</b>
<b>Respondent</b>	:	<b>Buckinghamshire Council</b>
<b>Representative</b>	:	<b>Maria Bamieh (in-house counsel)</b>
<b>Type of application</b>	:	<b>Appeal against a prohibition order</b> Sections 20/21 and paragraph 7(1) of Schedule 2 to the Housing Act 2004
<b>Tribunal members</b>	:	<b>Judge David Wyatt</b> <b>Mary Hardman FRICS IRRV (Hons)</b>
<b>Date of decision</b>	:	<b>5 February 2021</b>

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**DECISION**

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**Covid-19 pandemic: description of hearing**

This has been a remote video hearing. The form of remote hearing was V:CVPREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents we were referred to are in the Respondent's bundle, the videos provided by the Respondent as exhibits LQ36 to LQ45, the Applicant's bundle and the further documents described in paragraph 5 below, the contents of which we have noted.

## **Decision of the tribunal**

The tribunal orders that the prohibition order dated 9 July 2020 is confirmed.

## **Reasons**

### **Prohibition order and procedural history**

1. This appeal is against a prohibition order made by the Respondent local housing authority under section 20/21 of the Housing Act 2004 (the “Act”) by notice dated 9 July 2020. This ordered that:

*“The four storage rooms to the rear of 68A Broad Street and the three independently accessed rooms adjacent to 68A Broad Street, each outlined in blue on the attached plan must not be used for residential or sleeping accommodation by any person.”*

2. The order alleged various category 1 and category 2 hazards (examined below). It did not propose any remedial works, stating that it was not practical or appropriate to make these rooms suitable for residential occupation.
3. On 6 August 2020, the tribunal received the appeal from the Applicant. The tribunal gave case management directions requiring the Respondent to produce their bundle of documents to explain their reasons for making the order, and the Applicant to produce his bundle in answer.
4. There was no inspection. The directions noted that in view of the Coronavirus restrictions the tribunal did not propose to inspect the Property and good quality photographs should be provided by the parties. The parties were directed to write to the tribunal if they believed an inspection was required; neither did so. The Respondent provided photographs and videos, as noted above. The Applicant produced annotated copies of those photographs in his bundle.
5. The Respondent produced a second witness statement from Louise Quinn (senior housing standards officer) on 6 January 2021, and copies of their published HMO standards and enforcement policy on 12 January 2021.
6. The hearing was conducted by video platform on 14 January 2021. The Applicant represented himself and gave evidence. The Respondent was represented by Ms Bamieh. Ms Quinn and Paul Jennings (housing standards officer) attended to give evidence for the Respondent.

## **Applicant, property and rooms**

7. The Applicant confirmed that the owner of the Property (Essan Ghani) is his brother, and authorised the Applicant to manage the Property and conduct this appeal.
8. 68a Broad Street includes a four-bedroom flat above ground floor commercial (shop) premises. The main building has brick walls and a pitched tiled roof. The flat has a bathroom, kitchen and two bedrooms on the first floor, and two further bedrooms on the second floor. It is accessed by an external staircase at the rear. None of the rooms in the flat are adversely affected by the prohibition order.

### *Rooms 1-3*

9. The “*three independently accessed rooms adjacent to 68A Broad Street*” are described by the Respondent as rooms 1, 2 and 3. These are located between the brick exterior wall of the building at No. 68 and the brick exterior wall of the building (a driveway with one storey on the first floor above it) at No. 64. The external elevations are clad with timber and roofed with a different (UPVC-type) material to the conventional roofs of the buildings on each side. Room 1 is on the ground floor, accessed by a door on the side into the driveway. Rooms 2 and 3 are above it on the first and second floors respectively, accessed by doors onto the external staircase at the rear. The Applicant told us that this “*infill*” construction was put in just before his brother purchased the Property “*about nine years ago*”. He said that a ground floor toilet had been put in for the shop to use, and then upstairs bathrooms were added in early 2018. He said these rooms had never been used for residential purposes, only for storage.

### *Rooms 4-7*

10. The “*four storage rooms to the rear of 68A Broad Street*” are described by the Respondent as rooms 4, 5, 6 and 7. They are in a detached single-storey UPVC-clad construction which has an external door to a central corridor opening onto each of the four rooms. The Applicant said that, again, this had been constructed just before his brother purchased the Property. He said that, until 2018, it was leased to a local company which used it as office accommodation. He told us the tenants had converted this into “*flats*” in late 2017 or early 2018, putting in bathroom facilities, but they had been unable to agree terms for a new lease and the tenants had left to go back to Poland. The Applicant said he had taken over management of the Property from February 2018 and had used some of these rooms 4-7 for “*a few months now and again*” as accommodation for the staff from a family restaurant. He said he had not carried out any works to the relevant rooms and had kept them as they were, in case they were needed for staff.

## Issues

11. Ms Quinn said that in January 2019 the Respondent was informed by Thames Valley Police that they had discovered “*multiple occupiers living in poor conditions*”. In March 2019, Ms Quinn inspected with Mr Jennings and a planning colleague. In addition to rooms 1-7, they saw four caravans sited beyond the courtyard behind a reed screen, and they referred to a complaint from a former tenant, going on to describe subsequent events in some detail.
12. The Applicant disputed the Respondent’s account of the background. He said in effect that the complainant was not genuine and pointed out that the Respondent had not produced any contemporaneous records of any such contact from the police or other authorities. He produced a licence document allowing a third party to use the caravans only for storage. He referred to tragic personal circumstances and claimed that he had been intimidated, harassed and bullied by Mr Jennings. He said he was making a complaint to the Respondent about this and a racist statement alleged to have been made by him to a colleague. Ms Quinn said she had explained to the Applicant in August 2020 how to make a formal complaint, but no such complaint had been received. The Applicant said the prohibition order had been rushed through unnecessarily and for the wrong reasons, that if the Respondent had consulted him it would not have been served, and that an improvement notice should have been served on him instead. Our decision on this appeal is based on the evidence about the rooms and on the relevant legal requirements, not the disputed background, but we remind ourselves that the appeal is against the decision of the Respondent to impose the prohibition order.
13. In his appeal form, the Applicant suggested that rooms 1-3 were suitable for residential accommodation. In his statement of case and at the hearing, he accepted the prohibition order in respect of rooms 1 and 3, agreeing they are “*slightly*” too small for residential/sleeping accommodation. He asked that the prohibition order be quashed (cancelled) in respect of rooms 2, 4, 5, 6 and 7.
14. The case management directions identified the following issues to be determined and we examine these below, after a summary of the relevant law.
  - a) Has the council gone through the necessary steps in relation to the issue of the prohibition order and do the contents of the order comply with section 22 of the Act?
  - b) Do hazards exist and, if so, in what category?

- c) Should the council have taken enforcement action and, if so, what enforcement action is appropriate?
- d) Should the tribunal confirm, quash or vary the prohibition order and/or should the operation of the order be suspended for any reason, under section 23 of the Act?

**The law – hazards and prohibition orders**

- 15. Part 1 of the Act sets out a system for assessing housing conditions and enforcing housing standards. The Housing Health and Safety Rating System (England) Regulations 2005 prescribe a method for assessing the seriousness of any hazards found by calculating a numerical score. A “band A” hazard is one with a score of 5,000 or more; a “band B” hazard is one with a score of 2,000 to 4,999; and a “band C” hazard is one with a score of 1,000 to 1,999. A hazard in these bands is a “category 1 hazard”. A hazard in any lower band (i.e. with a score of less than 1,000) is a “category 2 hazard”.
- 16. Section 5 of the Act contains the general duty to take enforcement action in respect of category 1 hazards:

*“(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...*

*(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...”*

17. In the case of a category 2 hazard, the authority are not obliged to take enforcement action, but section 7 gives them power to do so. The kinds of action they are empowered to take include serving an improvement notice, making a prohibition order, serving a hazard awareness notice and making a demolition order.
18. Section 9 provides for guidance to authorities. This has been given in the Housing Health and Safety Rating System (“**HHSRS**”) Operating Guidance and the HHSRS Enforcement Guidance, both issued by the Office of the Deputy Prime Minister. Under section 9(2), the authority are required to have regard to such guidance. Ms Quinn referred to this and to the “*LACORS Guidance*”. National Guidance on Fire Safety in Residential Accommodation was published by LACORS (Local Authorities Co-ordinators of Regulatory Services) in July 2008.
19. Sections 20 and 21 of the Act set out the powers of the local authority to make prohibition orders. Section 22 prescribes the contents which must be provided in the prohibition order. By section 32, contravention of a prohibition order is an offence punishable by a fine.
20. Under section 25(1), the authority are required to 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. Section 25 also empowers the authority to revoke or vary a prohibition order in specified circumstances.
21. Schedule 2 deals with service of, and appeals relating to, prohibition orders. Under paragraph 7(1), there is a right of appeal to the tribunal against a prohibition order, and sub-paragraph (2) makes clear that the right of appeal is a general one. Paragraph 8 gives a specific ground of appeal that serving an improvement notice or hazard awareness notice, or making a demolition order, were the best course of action in relation to the hazard in respect of which the order was made. Paragraph 9 provides a right of appeal against the refusal of an authority to revoke (or to vary) a prohibition order. Paragraph 11 provides that an appeal to the tribunal is by way of re-hearing and may be determined having regard to matters of which the authority were unaware. By paragraph 12, when deciding whether any type of enforcement is the best course of action in relation to a particular hazard, the tribunal must have regard to the guidance given under s.9. The tribunal may by order confirm, quash or vary the prohibition order.

**Has the council gone through the necessary steps in relation to the issue of the prohibition order and do the contents of the order comply with section 22?**

22. As noted above, the Applicant alleged that Mr Jennings and the Respondent had rushed through the prohibition order, without consulting him, and should have served an improvement notice. The

witness statements from Ms Quinn and Mr Jennings explain that they were considering control of the relevant rooms through HMO licence conditions. They describe difficulties in obtaining access to the relevant rooms through the Applicant when they sought to inspect with fire and police officers and ultimately concern about whether the Applicant was a fit and proper person to be granted an HMO licence for the Property. They clearly did not consult him about the prohibition order in advance and it would have been better if they had done so. However, in view of our decision on the other issues in this appeal, it is unlikely to have made any real difference if they had. Six months have already passed since the prohibition order was made, but the parties have been unable to reach agreement. We examine below the issue of whether an improvement notice would have been the best course of action.

23. The Applicant did not dispute, and we are satisfied, that the prohibition order complied with the requirements of section 22 of the Act. Similarly, we are satisfied that the Respondent complied with the requirements under Part 1 of Schedule 2 to the Act for service of copies of the prohibition order on the owner, the Applicant and the mortgagees within seven days beginning on the date the order was made.

**Do hazards exist and, if so, in what category?**

24. The prohibition order alleged excess cold, fire safety, personal hygiene, sanitation and drainage, food safety, excess heat, damp and mould, water supply and light hazards. The Respondent sought in these proceedings to rely on overcrowding as a separate additional hazard. However, we are satisfied on the evidence we heard that when the Respondent imposed the prohibition order the size/shape constraints were not assessed as a hazard in themselves, only considered when deciding what type of enforcement action was most appropriate. Accordingly, our assessment of whether hazards exist is based on the hazards alleged in the prohibition order, not the later alleged overcrowding hazard.

*Excess cold*

25. The Applicant said in his appeal form that room 2 had a panel heater, but accepted at the hearing that was a mistake - there was no heater. He acknowledged that adding a heater would cause other problems. The room (1.18m wide) is already so narrow that a standard single bed (0.9m wide) would leave very little room, let alone if a heater was installed in the gap (even if this is possible/safe). He said this depended on where the heater was put, and the size of the bed, but “*maybe*” there was insufficient room.
26. It appears there is little or no space for any roof void/insulation in the three-storey in-fill construction of which room 2 forms part, with the

roof line the same as the two-storey building at No. 64. Ms Quinn also referred to the risks of draughts and heat loss from the external door into room 2.

27. The parties agreed that a panel heater was fixed to the wall in room 5. They were not clear whether it was functioning; it seems from the photograph that the power cable from the heater has not been connected to a supply. It loops around and the end appears to be tucked behind the top of the heater. The Applicant was asked whether this heater was controllable and programmable; he indicated that the control shown in the photograph was a thermostat. The parties agreed there were no heaters in the other rooms. The Applicant said that storage panel heaters with thermostats were stored in room 7, ready to be installed "*when the prohibition order has been removed*".
28. The single-storey premises accommodating rooms 4-7 have a flat roof, with roof lights into the central corridor. The parties agreed that room 4 had brick cavity external walls on two sides from an old structure, but it had only partition walls onto the central corridor and adjoining room 7. The Applicant argued that room 5 formed part of the same old brick building (which he said was from the 1930s or earlier) and the external walls were as wide as those of room 4. Ms Quinn said these walls were only about four inches thick (based on her inspection of the windows and window reveals). Even if the UPVC cladding covered bricks, she said, they could only be a single brick wall with no cavity. The Applicant said the walls of rooms 6 and 7 are half block and half timber, about "*10-12cm thick*". Ms Quinn said a new brick wall had been constructed and was part of the extension clad in UPVC, but most of the extension forming rooms 6 and 7 was probably timber or timber framed and was all only about 4 inches (i.e. just over 10cm) thick. Ms Quinn also referred to the large areas of exposed ceiling and exposure directly or indirectly to the "*generally narrow*" external walls which she said left little or no room for thermal insulation.
29. The Applicant accepted there was no planning or building regulations approval for either of the premises accommodating rooms 1-3 and rooms 4-7. He suggested he was in the process of applying for retrospective planning approval, but did not deny that he had not yet made any such application. He also said that the previous owners had consulted the building control department, but produced no documentary evidence of this. He told us that in rooms 4-7 he had made holes in the walls and ceilings and pushed through a pencil to test the insulation, finding "*standard*" insulation "*5-6.5cm*" thick in the walls and "*6.5-7cm*" in the flat roof. He suggested that he had shown this to Ms Quinn but, when challenged, said he could not remember whether he had. He accepted he had not produced any photographs or any other evidence of any such insulation. He accepted that the ground floor premises had not been built for residential purposes, but said it would have been made for people to work/live in.



30. Mr Jennings' HHSRS assessments of each of the rooms for excess cold referred to a national average potential for harm as one in 350. This appears to be an error; the national average for a post-1979 construction is 530. He adjusted this to one in 3 in view of the lack of heating and the nature of the premises, producing a score of over 5,000.
31. Ms Quinn took the same starting point but adjusted this to one in 18. Something seems to have gone awry in the calculation of her score, producing a much higher number, but we can see that her assessment would have produced a score of over 3,000. Ms Quinn told us that notwithstanding the different statistical starting point the probability of harm of one in 18 remained her professional assessment. It was the same for all the rooms; room 2 had some potential benefit from room 3 above it, but the additional exposure from the external door. Rooms 4-7 had the additional exposure to the flat roof and the larger external wall areas. Her assessment of one in 18 was based on her experience and she was sure that excess cold was a band A/B, category 1 hazard in each room.

### *Conclusion*

32. In our assessment, the disputed evidence from the Applicant about the premises and the insulation is not likely to be true. He said nothing before the hearing about having tested for insulation and had produced no other evidence of what he said he had found. He could only describe what he said the previous owners had told him about the premises. He could not explain why he had not actually applied for retrospective planning or building regulations approvals, or produced expert evidence from a surveyor or the like about the construction.
33. We accept the evidence of Ms Quinn as more likely than not to be true. She gave clear, direct and fair answers to questions. Her evidence was consistent with the photographs and the videos; these show walls for rooms 4-7 which generally are not much wider than the window frames. Strictly speaking, both Ms Quinn and Mr Jennings adopted the wrong statistical starting point for likelihood of harm, but the statistical starting point of 530 is for an average property constructed after 1979 and needs to be very substantially adjusted to reflect the likely conditions of the relevant rooms and the fact that part of the construction significantly pre-dates this.
34. In our assessment, Ms Quinn's likelihood of one in 18 is appropriate in relation to the lowest-risk room (i.e. room 4, with two external cavity walls, and possibly room 5 if the basic panel heater in that room had been operational) and the other rooms probably carry a greater likelihood of harm. We are satisfied that in their current condition all these rooms would expose relevant occupiers to category 1 excess cold hazards, in band B or above.

## *Fire safety*

35. In relation to all the relevant rooms, Ms Quinn referred to the published LACORS guidance (described above). She said that after consultation with the fire service the Respondent had applied the requirements indicated in the guidance for fire separation, interlinking of mains powered smoke detection and proper fire resisting doors. She indicated that there appeared to be no adequate fire separation between/for the relevant rooms. The Applicant did not dispute this.
36. The Applicant agreed room 2 only had a battery smoke alarm. He was asked whether he accepted that it should be wired to the mains and interlinked, since a fire there could affect the other rooms or the main flat, and vice versa. He accepted that if someone was living there it would need that kind of system, but said that because it was only used for storage this was not necessary. He said room 2 had the benefit of emergency lighting externally, just outside the door on the exterior wall for the external staircase. He told us that room 2 has a fire door, but accepted the door is not self-closing.
37. Ms Quinn agreed there were mains powered smoke detectors in each of rooms 4-6, but said they were not interlinked because they all operated individually when she had tested them. The Applicant said they were interlinked, but would not all sound unless tested with smoke or the like. He produced a fire system certificate, but this referred only to the “*landing*” of 68a, not the relevant ground floor rooms in the separate premises outside. He told us that it covered all the rooms. He also produced an emergency lighting installation/test certificate, and an electrical inspection test certificate but, respectively, these did not say which parts of the Property they related to and indicated that they related only to part of the installations and only the “*fixed wiring in flat*”. Again, the Applicant told us that these certificates covered all the rooms. He told us that room 5 has a self-closing fire door, rooms 6 and 7 have fire doors without self-closers and room 4 has neither.
38. Ms Quinn’s HHSRS assessment for fire for rooms 1-3 referred to the lack of an adequate smoke detection system, limited natural light and escape lighting (saying the route was “*poorly lit*”), and lack of fire-fighting equipment. She had entered the national average potential for harm as one in 2157 and adjusted this to one in 100 on the basis that the lack of any or adequate heating increased the chances of use of portable heaters and so increased the risk of fire, saying that the size and shape of the rooms may result in such heaters being near to beds or other furnishings. When we asked, she accepted that this assessment was for room 3 and escape from room 2 was easier. For room 2, she would adjust the likelihood to one in 180 or possibly one in 320. She had already pointed out in her second witness statement that a fire in rooms 1-3 or the flats on either side could compromise the external staircase, which is made of timber and gives access to everything above

the ground floor. She had adjusted the spread of harm outcomes because she said the lack of adequate smoke detection and the poorly lit escape route increased the risk of fatal, severe and serious outcomes from fire.

39. In her assessment of rooms 4-7, Ms Quinn referred to similar factors, saying that the smoke detection system was not interlinked and the shared corridor area could be compromised in the event of a fire. She said that in her assessment the potential for harm was one in 100. Again, she had adjusted the spread of harm outcomes because she said the lack of interlinked detection and a protected escape route substantially increased the risk of fatal, severe and serious outcomes from fire.

### *Conclusion*

40. In our assessment, the evidence from the Applicant about the smoke detection system for rooms 4-7 is not likely to be correct. It is more likely that the system is not properly interlinked if testing one unit does not cause all the units to sound. It does appear that some emergency lighting equipment is in place, at least in the corridor for rooms 4-7, although we have no evidence that it functions correctly. It is more likely that the test certificate we were shown relates to the main flat, not this separate construction. There is plainly a high risk of any occupier using portable heaters in any of the rooms and that given the size and shape of the rooms this may be near to beds, furniture, clothes and other possessions. It is likely that none of the rooms have adequate fire separation in their internal floor and ceiling or the timber staircase providing their means of escape (room 2) or the walls between them or the corridor providing their means of escape (rooms 4-7). In the circumstances, we consider that Ms Quinn's revised assessment of probability of harm of one in 180 for room 2 is appropriate and the probability of harm for the other rooms is the same or higher. Accordingly, in our assessment, fire is at least a category 2 hazard in each of the relevant rooms.

### *Damp and mould*

41. Mr Jennings' HHSRS assessments of damp and mould described a lack of ventilation to the outside air from the shower to room 2 and from rooms 4, 6 and 7. He referred to a national average potential for harm of one in 644, which he adjusted to one in 32 because he said the lack of adequate ventilation and small room sizes increased the risk of high humidity and mould growth. Ms Quinn did not refer to room 2 but made the same assessment for rooms 4, 6 and 7, noting the lack of ventilation from the shower in room 4.
42. The Applicant said that rooms 4 and 6 would be used for sleeping accommodation, room 5 (which he said does not have a shower, only a

toilet) would be used as a dining room and room 7 would be a kitchen area. He said room 7 already has a kitchen sink (in an area which cannot readily be inspected because other items have been stored in front of it). He said in his written submissions that all these rooms had windows for fresh air and plenty of sunlight. However, it appears from the photographs, and he did not deny when it was put to him, that only room 5 has a window opening to the outside air. Rooms 4, 6 and 7 only have windows opening to the internal corridor. Ms Quinn said, and we accept, that the external window to room 6 does not open but its shower does have a window opening to the outside air.

43. In our assessment, the probability of harm assessed by Mr Jennings and Ms Quinn of one in 32 is appropriate, particularly in view of the nature of these premises and the apparent lack of any air vents and likely lack of adequate thermal insulation which can be expected to cause condensation. Damp and mould is a category 2 hazard in respect of rooms 4, 6 and 7. We do not have sufficient evidence to be satisfied that this hazard exists in relation to rooms 2 and 5.

#### *Other hazards*

44. We do not propose to assess the excess heat, personal hygiene, sanitation, drainage/food safety, water supply or light hazards disputed by the parties, because it is unnecessary. The hazards established above are sufficient for us to make our decision on the remaining issues in this appeal. Several of these (and the other hazards raised subsequently by the Respondent) also relate to the fact that as matters stand occupiers of the relevant rooms would have to use the kitchen in the main flat and would have no living space. The Applicant has sought to counter this by saying that he would convert some of the rooms into living and kitchen space, as explained above, and rooms 4-7 could be occupied by a single family. It is not necessary for us to make findings about these matters, but they all involve additional changes which the Applicant accepts would be necessary (i.e. the current installations and facilities are not adequate for residential accommodation) and would require design and building work to implement.

#### **Should the council have taken enforcement action and, if so, what enforcement action is appropriate?**

45. As noted above, the Applicant does not deny that if (as we have found) relevant hazards exist the Respondent should have taken enforcement action, but argues they should have served an improvement notice.
46. Generally, a prohibition order is a severe course of enforcement action. We note the relevant provisions of the HHSRS Enforcement Guidance. This indicates that a prohibition order might be appropriate where: “...the conditions present a serious threat to health or safety but where remedial action is considered unreasonable or impractical for cost or

*other reasons...*” or “*in an HMO, to prohibit the use of specified dwelling units or of common parts*”. It cautions (at 5.22) that it is important to bear in mind that prohibition orders are: “*...intended to deal with health and safety matters, whereas the separate provisions dealing with non-licensed HMOs in Part 4 of the Act are available where action is required to limit the number of occupants in relation to the inadequacy of amenities.*” It refers to the need to have regard to the risk of exclusion of vulnerable people from the accommodation, the potential alternative uses of the relevant property and whether it is appropriate to offer financial assistance. It also refers to the need to consider the availability of local accommodation for rehousing any displaced occupants, but that is not relevant here because the Applicant has confirmed that the rooms were when the order was made and remain vacant, used only for storage.

47. It is clear from the Enforcement Guidance that action should be directed at making potential accommodation suitable (whether by serving an improvement notice, or otherwise) if that is reasonable and practical. However, as matters stand, it is not. First, it is important for health and safety that the relevant rooms are not used as sleeping/living accommodation, at least in their current condition. Second, an improvement notice would not be feasible in relation to the key hazards identified in this decision, particularly the practical issues of thermal insulation, fire separation and the problems with installing adequate heating systems in rooms which may have no safe space for heating to be installed. An improvement notice might have been appropriate in relation to some of the fire safety issues (such as the smoke detection system for all the rooms and any missing fire doors/self-closers) and similar matters if they were the only defects, but even if these were remedied the key hazards would still exist.
48. Standing back, it is clear that the premises are not currently suitable for residential accommodation and it is not possible readily to specify what might need to be done to resolve this. Remedial action would necessitate more detailed investigation of the construction and a substantial redesign, even if it is possible to create something suitable for residential accommodation from the relevant premises. It may be possible to salvage some of what is there by making substantial alterations, or the only option might be to demolish and reconstruct in part. It is not appropriate to expect the local authority or the tribunal to undertake substantial works of investigation and redesign of these premises for the Applicant/owner. On the evidence produced, they were unsuitable for residential accommodation when they were constructed/converted, the Applicant has provided no adequate or reliable information about their construction and no applications for planning or building regulations consent have been made.
49. Further, even if a design can be found which does not necessitate demolition of the existing structures, it may well reduce the size of the relevant rooms, which already appear very small. As Ms Quinn said,

the rooms may well cause overcrowding hazards even as they are, particularly in relation to room 2 but potentially also in relation to rooms 4-7, which are already smaller than the 8 sq. m. sought in the Respondent's general standards for licensed HMOs where no other living accommodation is available. Ms Quinn assessed the overcrowding probability of harm even in relation to the current rooms 4-7 as one in 180, although this should reduce if a new design resulted in some of these rooms being given up for separate living/kitchen space and/or interior walls being moved to create more space for the other rooms.

50. In the circumstances, we are satisfied that, of all the courses of action available to the Respondent, a prohibition order was the most appropriate. It is important to bear in mind that a prohibition order is not necessarily permanent. If the Applicant can investigate the premises and consult appropriate professionals, his advisors might be able to design a scheme to reconstruct/alter rooms 4-7 to create accommodation suitable for residential use, with some as sleeping accommodation, some as living space and some as kitchen space, obtain planning consent, apply for building regulations approval and carry out the relevant works. He told us that he wanted to work with the Respondent and he may wish to consult them about any proposed redesign. It may not be possible for the Applicant to find a way to create residential accommodation from rooms 1-3 in the same way, but that is a matter for him to investigate. In either case, he could then apply to the Respondent to revoke the prohibition order in relation to the relevant rooms if he can satisfy them that the relevant hazards no longer exist.

**Should the tribunal confirm, quash or vary the prohibition order and/or should the operation of the order be suspended for any reason, under section 23 of the Act?**

51. In view of the findings we have made above, we are satisfied that we should confirm the prohibition order. The terms of the order already minimise unnecessary interference with alternative uses of the relevant rooms by only prohibiting use for residential or sleeping accommodation.
52. The Enforcement Guidance refers (from para. 5.24) to suspension, indicating that suspension “...*may be appropriate where enforcement can safely be postponed while a more strategic approach to area renewal is considered, including where landlords have a programme to make their stock decent...*”. We are satisfied that is not the case here and that in all the circumstances it would not be appropriate to suspend the operation of the prohibition order.

**Name:** Judge David Wyatt

**Date:** 5 February 2021

## **Rights of appeal**

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).