FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	CHI/23UE/HPO/2021/0002
Property	**:**	Flat B, 13 Ryecroft Street, Gloucester, GL1 4LZ
Applicant	**:**	JPPD Limited
Representative	**:**	Jonathan Hackforth (Director)
Respondent	**:**	Gloucester City Council
Representative	**:**	James Dykes (Principal Private Sector Housing Officer)
Type of Application	**:**	HA'04 Sched 2, appeal against Prohibition Orders
Tribunal Members	**:**	Judge Dovar Ms P Gravell
Date and venue of Hearing	**:**	5th October, 2021, Remote
Date of Decision	**:**	1st November 2021

DECISION

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1. This an appeal by JPPD Limited ('the Company') against two prohibitions orders and one improvement notice made under the Housing Act 2004 ('the Act') on 19th May 2021, by the Respondent City Council in respect of the Property. The Property is a basement flat in a mid-terraced house. In around 2006 it was converted from a single dwelling into three flats.

2. The original appeal dated 4th June 2021 had been solely against the prohibition orders, but on 20th July 2021, the Tribunal, following an application from the Company dated 17th July, permitted an appeal against the costs of the improvement notice.

Preliminary point on scope of appeal

3. The Respondent queried the appeal against the notice given that it had been revoked by the time of the appeal. However, the charges in relation to it had not and therefore the Tribunal confirmed on 23rd July that the appeal in respect of the notice would remain in place, albeit limited to challenging the costs.

4. The Tribunal's powers in relation to the costs of an improvement notice under s.49 of the Act are contingent on allowing an appeal against the underlying notice. The Tribunal considers that it must have the power to quash the notice, even when it has been revoked, as otherwise the Respondent would be able to retain their claim for costs in respect of a notice revoked by them, even if a Tribunal considers that it should not have been made.

Complaint and Investigation

5. Following a complaint by the then tenant of the Property, the Respondent carried out an investigation as to potential hazards.

6. Cristina Vila is the Respondent's Private Sector Housing Officer who dealt with this matter on their behalf. She provided a witness statement dated 13th August 2021, which set out the following factual background, most of which is uncontentious, some of which was amplified in oral evidence.

    a. In April 2021, she had received a complaint from the tenant about the Property who had said he had experienced such difficulties with the Property, including the use of the cooker, that he had decided to sleep rough. She contacted Mr Hackforth, the Company's director, and their letting agents, Surelet, and arranged a visit. Mr Hackforth notified her that the tenant had left early and that the letting agents had inspected and found nothing wrong. He also said he had a new tenant ready to move in on 8th May.

    b. On 29th April, she attended with a representative of Surelet and both commented that the external staircase was not properly secured. Once inside she recalls telling the representative that the hazards were so serious that enforcement was a probable outcome. She clarified in oral evidence that at that time she had not identified the precise issues and needed to do that once back in the office.

c. On 6th May she then spoke to Surelet and said that given the serious nature of the hazards and that a tenant was due to move in on 8th May, a decision had been made to issue a prohibition order. She did not set out the precise issues nor the remedy required, indeed she still required further information and another site visit at this point. She then spoke to Mr Hackforth and relayed the same information. She reported that he was rude and dismissive in response and had said that there was nothing wrong (Mr Hackforth did not agree with this characterisation of his attitude in this call). The next day Surelet contacted her to express their concern about the proposed order and the fact that the Company had said they wanted to go ahead with the letting. Later that day they told her that the Company had put on hold the letting pending the issuing of the order.

d. On 12th May, she undertook another inspection with Surelet and a fire officer. The fire officer did not conclude that the cooker was a fire risk, it appears the officer was not qualified to make a proper assessment.

e. A further visit took place on 14th May by one of her colleagues and after a peer review meeting it was decided to issue two prohibition orders and one improvement notice.

Notices

7. On 19th May 2021, the Respondent served on the Company two prohibition orders under s.20 of the Act and one improvement notice.

8. The first set out a hazard identified as a category 1 hazard in the 'Falling on stairs' category, being the structure of the external metal spiral staircase leading to the Property. The assessment calculations provided by the Respondent showed that they considered that the deficiencies and risks arose from: the length of the flight, the width and poor friction. It was also said to be unsafe given that the handrail was not securely fixed. The type of property was listed as 'Houses Pre 1920' and a 'significant' increase in the likely harm was justified on the basis that the stairs were the only access to the Property, combined with their design flaws. The harm was identified as a fall, potentially the whole flight, down to concrete, potentially in cold weather and overnight without being discovered. This was said to justify increasing the harm above the national average. The remedial works required in the notice were to fix the handrail and apply anti-slip coating on the steps.

9. The second set out hazards identified as being category 1 hazard, 'Position and Operability of Amenities' category, in the kitchen, being:

    a. the position of the cooker, in that it had insufficient head clearance due to the fact that it was situated under a staircase with a sloping ceiling. It was considered that this would make it dangerous for tall people who would keep their backs bent whilst cooking. In evidence Ms Vila confirmed that the risk was that over a long period of time, being forced to bend over the hob, would create problems with posture. Further she had increased the likelihood of the danger occurring to more than 1 in 1.5 as although the standard likelihood would normally be much less

for this type of property, she considered that this particular risk was unique to this property and therefore justified a significant increase;

b. a lack of sufficient work space (Ms Vila suggested that 1000mm was needed as a minimum and this fell below that standard), and

c. only one of three double electrical sockets was safe to use, as one was above the cooker and the other was in a corner between the cooker and the sink.

10. Again the type of property was listed as 'Houses Pre 1920'. The remedial works were to move the cooker to a space with sufficient height, increase the amount of usable worktop space and install more sockets.

11. The improvement notice noted hazards in the 'Falling between levels' category, caused by a metal bar on the ground, which was a gate stop, and to replace various spindles which were missing from the external staircase. Although no copy of the actual notice was provided, sufficient evidence was given by the parties as to the content of that notice and the reason for it for the Tribunal to consider this notice. The assessment calculations had also been provided.

12. In addition on 19th May 2021, the Respondent made a demand for recovery of expenses under ss.49 and 50 of the Act. One demand was made in respect both prohibition notices as well as one for the Improvement notice. Each demand was for £320.47. The Tribunal was

told at the hearing that this was not the actual expenditure for these notices, but an approximation of the cost.

Works subsequent to the Orders and Notice

13. The Company carried out the works to the staircase and the metal stop. After inspecting the Property, the improvement notice was revoked on 20th July, but it was not possible to revoke the first prohibition order as by then it was subject to this appeal.

Challenges

14. Mr Hackforth on behalf of the Company considered that the report by the tenant had been malicious and motivated by a desire to exit the tenancy early. The Tribunal does not consider that motivation is relevant in that the issue is whether the orders and notice were warranted.

15. The next, general basis for challenge, was that the Respondent had jumped the gun in issuing the orders and notice when they had not explored informal action first. Mr Hackforth was concerned that the Respondent had not given the Company any opportunity to remedy the issues highlighted before proceeding not only to formal enforcement action, but the most severe, in terms of the prohibition orders. He relied on the Housing Health and Safety Rating System Enforcement Guidance from the ODPM, dated February 2006 ('the Guidance'), in particular paragraph 2.17 which encouraged local authorities to adopt the Enforcement Concordat which was based on the principle that

'*anyone likely to be subject to enforcement action should receive clear explanations of what they need to do to comply and have an opportunity to resolve difficulties before formal action is taken.*'

16. In respect of the improvement notice, Mr Hackforth said that as soon as it was pointed out, he remedied the situation. Further he contended that had they informally raised the issue, he would have done the same.

17. In respect of the prohibition order relating to the external stairs, Mr Hackforth contended that Surelet had already informed Ms Vila at the visit on 12th May that anti-slip paint would be applied. Whilst he did not think it was necessary, he said he could see that was beneficial to the occupation. The handrail was also fixed relatively quickly, and he had not been aware it was an issue until the order.

18. In respect of the prohibition order relating to the kitchen, Mr Hackforth disputed that these were category 1 hazards and that the order was warranted. Firstly, he contended that they all complied with building regulations, for which a certificate had been provided. Secondly, the height over the cooker was not a problem as a tenant could stand back when cooking and did not need to lean over. Thirdly, he denied there was any requirement for a minimum of 1000mm cooking space as the Respondent required. Finally, the electrical sockets had been installed and approved by a qualified electrician and he disputed that two of the three sockets were in difficult positions to access.

Response

19. The Respondent contended that the multiple category 1 hazards that had been identified justified the prohibition notices. Further given that a new tenant was about to be installed, there was a need to prevent occupation. Mr Hackforth's dismissive response on 6th May was also a cause for concern and indicated that orders were necessary.

20. Ms Vila also contended that if a landlord had allowed a property to be in such a hazardous condition, that was an indication that either they were unaware of their responsibilities or were content to ignore them. Either way that was a reason for issuing an order, rather than taking informal means or less severe action. She formed the impression that Mr Hackforth was in denial about the condition of the Property and was not going to take the appropriate steps. She was also dismissive of Surelet's role, considering they were just agents to find tenants and they did not discuss any repairs.

21. In terms of the kitchen hazards, Ms Vila clarified that the issue with the height above the cooker was ergonomics, being that the need to bend over the cooker, particularly to get to the rear burners, was likely to lead over time to strain injuries from bad posture. The lack of work surface increased the risk of knocking pans over and there was no real space to chop food. The sockets were in inaccessible areas and the fire officer had said the positioning was dangerous.

Discussion

22. An appeal under Schedules 1 and 2 of the Act is by way of re-hearing and the Tribunal may confirm, quash or vary the order or notice.

Lack of informal warning

23. From the narrative provided above by Ms Vila, as supported by her oral evidence at the hearing, it is clear that the approach recommended by the Guidance was not adopted by the Respondent. Before giving the Company a clear explanation of what they needed to do and an opportunity to resolve the issues, a decision had been taken to serve the orders and notice and then they were served. The Respondent justified this on the basis that they feared that a tenant was imminently going to be put in the Property and they wished to prevent that.

24. It seemed clear that neither Surelet nor the Company were aware of the Act provisions. Ms Vila considered that to be a further justification for issuing the orders and notice without further reference to the Company. In her view, it was the duty of a landlord to make themselves aware of the legislation and abide by it. The Tribunal is concerned that this approach meant that there was a failure by the Respondent to properly inform and educate this landlord as to its obligations, rather than move straight to formal measures. It was only after they had been told that orders and a notice were going to be given that they told what the implications were. It was at that point that the Company stated it would hold off renting until the paperwork had been sent out; an indication that the Company was not as impervious as Ms Vila had believed. Further, it appears that it was not until the orders and notice were served that the Company was informed of the precise nature of the concern and what was required to remedy the problems.

25. Overall, save for the issues with the Kitchen, the Tribunal was left with the overwhelming impression that had the Respondent provided on an informal basis the works that were needed to the staircase, the Company would have carried them out and that there was no need to serve either an improvement notice or a prohibition notice on those items.

Prohibition Order: External Staircase

26. The Tribunal did not consider that a prohibition order was warranted in this case. As stated above, the Tribunal considers that insufficient attempts were made to deal with the matter informally. It was not until the prohibition order was served that the Company was informed of the actual hazard and the remedial work required. It is notable that the Company carried this out in a relatively short period of time. The Tribunal considers that an informal approach should have been made at first.

27. Further the Tribunal does not think that this was a category 1 hazard. The actual evidence of danger was not provided, the photographs of the stairs were taken on 29th April 2021 and they appear to be dry but the officer's assessment notes record them as being very slippery when wet on that date, the evidence does not support there being a slip hazard. It also appears that the guidance on staircases was not properly followed in that the width of the staircase was wrongly interpreted, given its spiral nature, there was not a long flight to fall down and it ignored that there were holes in the steps which were designed to drain water and provide texture for grip. No regard was had to paragraph 21.11 of the Guidance,

which provides that where there was an obvious change in direction of the stair (such as with a spiral staircase) '*…this may mean that the user takes greater care and increases concentration, reducing the likelihood of an occurrence.'* Further paragraph 21.12 stated that accidents on straight stairs are twice as likely than on winding ones, again no account had been taken of this. Finally, no adjustment had been made to take into account that the external stairs were more likely to have been added when the property was converted into flats around 2006 and not when the house was originally built, the average likelihood for a post 1979 flat of 1 in 409 would have been a more appropriate starting point in the assessment, rather than 1 in 218 for a pre 1920 house. Ms Vila had assessed the actual likelihood as being in the range of 1 in 42 to 1 in 24 when there was insufficient justification for any increase.

28. For those reasons, the Tribunal considers that informal action should have been taken and in any event it was not sufficiently serious to justify the order. Therefore, the Tribunal quashes the prohibition order in relation to the external staircase.

Prohibition Order: Kitchen

29. The Tribunal does not consider that a category 1 hazard arises in respect of amenity due to the height above the cooker. A proper assessment would have the risk of injury as small and certainly not one alone that would necessitate an order. Given the harm was a long term harm arising from posture, there was also no urgency in any remedial work. Likewise the risk of injury related to the lack of work space and socket

position was over stated. A draining board could easily have doubled up as a work top. Again the risk of occurrence had been overstated by the fact that the Property was assessed as a house pre 1920 rather than a flat post 1979 which would have better reflected the conversion date to flats. The average likelihood of a health outcome in the vulnerable group is 1 in 22,421 for a post 1979 flat. Ms Vila had increased the actual likelihood to the range of more than 1 in 1.5 in her assessment. The Tribunal did not agree with her approach.

30. The Tribunal did consider that there may be a fire risk, but the Respondent did not make the order on that basis and indeed there was insufficient evidence of such a risk. However, the Tribunal considers that it is unlikely that the manufacturers installation guide would have sanctioned installation with a sloping roof due to the risk of hot spots. Further there may have been electrical hazards given the proximity of the cooker switch was less than 100mm from the edge of the cooker, but the Tribunal was not given any measurements and this was not the basis of the Order. Likewise the situation with the socket near the sink, if it was less than 300mm from the edge of the sink, that is likely to be an electrical hazard.

31. Accordingly, the Tribunal quashes this order on the basis that the hazards were overstated.

Improvement Notice

32. There was no warning about these issues. They were quickly remedied. There should have been an informal approach setting out the risks, with the threat of enforcement action if they were not attended to.

33. Accordingly, the Tribunal quashes the improvement notice. Whilst it has already been revoked, this step is necessary given that the costs claimed by the Respondent are contingent on the Tribunal quashing the underlying notice.

Costs

34. Given that the Tribunal has quashed all the notices, and in light of the Tribunal's view that informal steps should have been taken, the costs he has paid under s.49, should be repaid to him.

Conclusion

35. The notice and orders are quashed, the cost demands are revoked and given the success of the Appellant, the Tribunal also orders that the Respondent should refund the Appellant any application and hearing fee as well as any sums paid under the s.49 notices.

JUDGE DOVAR

Appeals

A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk .

The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.