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|  | | **FIRST-TIER TRIBUNAL PROPERTY CHAMBER**  **(RESIDENTIAL PROPERTY)** |
| **Case Reference** | **:** | **MAN/00DA/HEP/2019/0001& 0002** |
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| **Property** | **:** | **Flat 1 and 2 Farnley Hill Methodist Church. 120 – 122 Stonebridge Lane. Leeds. LS12 5AQ** |
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| **Applicant** | **:** | **Arshad Mahmood** |
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| **Respondent** | **:** | **Leeds City Council** |
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| **Type of Application** | **:** | **The appeal against a Prohibition Order** |
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| **Tribunal Members** | **:** | **Judge M Simpson**  **Mr J Faulkner** |
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| **Date of Determination** | **:** | **22 July 2019** |

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| **Date of Decision** | **:** | **25 July 2019** |

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| **DECISION** |

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**Background**

1. By a Statement, dated 27th May 2019, in support of Grounds of Appeal, Mr Arshad Mahmood, on behalf of himself and his wife Rozina Mahmood, seeks to have the Prohibition Orders dated 26th March 2019, set aside.

2. The Grounds of Appeal are set out in Mr Mahmood’s applications dated 19th April 2019.

3. In addition to considering those documents and the additional document (an email from the Leeds city Council Planning Compliance Officer dated 5th April 2019) enclosed with Mr Mahmood’s bundle, we also considered the documents filed by the Respondent, Leeds City Council, including the Statement of Case prepared by Jamie Comer (Principal Legal Officer) and the witness statement of Jason Murray (Principal Housing Officer) dated 11th June 2019.

4. We inspected the properties at 11am on Monday 22nd July 2019 in the presence of Mr Mahmood junior (the son of the Appellants) and Mr Comer and Mr Murray.

5. We convened thereafter to prepare our decision, neither party have required a hearing.

6. There are no procedural issues in respect of the Tribunal application and proceedings.

**Determination**

1. We deal with each of the appellants’ Ground of Appeal as they appear in the application, taking into account the documentary evidence set out above and our inspection, which we found to be informative.
2. The Fines imposed should be one not two. They have a disproportionate financial impact.
3. Determination. The “Fines” are not Fines but costs at a reasonable level. Each flat is a separate dwelling. A notice could have been exclusive to one flat and not the other. The flats were separately assessed. The Tribunal has no jurisdiction to quash a charge when not allowing an appeal.
4. The Prohibition Notices are unreasonable because a warning or the service of less onerous Notices (hazard awareness and /or Improvement) would have been more appropriate.
5. Determination. Having identified two category 1 hazards. (Excess cold and Fire risk), the Respondent had a statutory duty to take appropriate enforcement action. The severity of the risks – unabated at the time of our inspection – justifies a Prohibition Notice. Such conversion and development has had taken place is already in conflict with the Listed Building planning requirements and to specify works in an Improvement Notice would be in conflict with those issues.
6. It is clear from Mr Murray’s statement that he did consider other options, but, rightly in our view, considered them to be inappropriate, have correctly applied the HHSRS Assessment.
7. 9. There was a failure to consider then total financial impact of the chosen enforcement action.
8. Determination. This is not a discrete requirement of the Housing Act 2004. To the extent that it could be said to impact upon the reasonableness of the chosen enforcement, we are satisfied that the issues were properly considered and balanced by Mr Murray. The financial detriment to the appellants arises much more from the expensive requirements of a Listed Building than any compliance with properly issued Prohibition Orders.
9. There was no opportunity afforded to the landlords for pre-action discussion.
10. Determination. None is required under Part 1 Housing Act 2004. In any event the hazards were such as to leave the Council open to criticism if they did not act promptly. There is no evidence, from our inspection, to suggest that the appellants have taken the opportunity to seriously address the issues raised, either by formal or informal discussions or by any works at the flats, which remain almost exactly as described by Mr Murray at the time of his inspection on 20th March 2019.
11. 11. The notices are invalid because the surname is misspelt and should not have been served on Mrs Rozina Mahmood or the bank.
12. Determination. The Notices are in the name of the Registered Proprietors at the Land registry. Mrs Mahmood is one such. There is a statutory obligation on the Housing Authority to serve the Registered owners and any mortgagee (Paragraph 2. Schedule 2. Housing act 2004). The discrepancy of spelling, if any, is minor. It has not caused any confusion or injustice, and, applying the Overriding Objective, is not fatal to the local Authorities enforcement.
13. The cost of rehabilitation is excessive because of listed building requirements.
14. Determination. That may be so, but is not a ground for setting aside a Prohibition Order. There is no requirement, by virtue of the Prohibition Orders, to carry out any work. The prohibition simply prevents letting as a dwelling. The high cost of compliance with Listed Building requirements, if the appellants chose to carry out works to satisfy the Prohibition Order, is a matter that the appellants may have been wise to consider before embarking upon letting for residential purposes. It cannot however justify the letting of hazardous dwellings to tenants.
15. For the above reasons we find that the appellants have not established that the Prohibition Orders were defective or an unreasonable method of enforcement and that the costs claimed are appropriate.

**Signed: Judge M Simpson**

**Date: 25 July 2019**