FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**MAN/00DA/HPO/2017/0004, 0005, 0006, 0007, 0008, 0009, 0010**
Property	**:**	**Flats 1-7 Westbourne Street, Leeds LS11 6EN**
Applellant	**:**	**Ilkley Taxis Limited**
Representatives	**:**	**Adeel Maskin**
Respondent	**:**	**Leeds City Council**
Representative	**:**	**Leeds Legal Services Department**
Type of Application	**:**	**Housing Act 2004, Schedule 2 Para. 7(1)**
Tribunal Members	**:**	**Phillip Barber (Tribunal Judge)** **Jenny Jacobs (Surveyor Member)**

DECISION AND REASONS

DECISION

1. With the exception of the appeal on the issue of a Category 1 hazard for the issue of lighting (Schedule 1, matter 13) in Flat 1 (which has now been remedied by the Appellant), the appeals are dismissed.

2. The Appellant is to pay the costs

REASONS

Introduction

3. The appellant purchased a four storey, double fronted, pre-1920s back to back property ("the property") on the 23 March 2017. Whilst the property was already converted into a number of self-contained units, it was envisaged by the appellant that the property would thereafter become seven self-contained flats, each of which comprises of one room in which cooking, eating, sleeping and all other activities of daily life would take place. In each room, a small area would be partitioned to make a small toilet and shower room.

4. Following the service of notices under Section 239 of the Housing Act 2004 ("the Act"), the respondent exercised a power of entry and inspected the property on the 30 June 2017 and again on the 07 July 2017. Following those inspections, the respondent served a number of Prohibition Orders under sections 20 and 21 of the Act, having identified a number of category 1 and 2 hazards.

5. The respondent carried out the inspection in accordance with the provisions in the Housing Act 2004 and in particular the system for assessing housing conditions set out in section 1 of the Act – the HHSRS – and served Prohibition Orders in respect to each of the 7 flats on the 05 September 2017. Appeals were submitted against each of those Prohibition Orders and following various works and negotiations, which we need not go in to, the issues in the Prohibition Orders were narrowed and in relation to three of the flats, revoked.

6. In relation to each flat, the Prohibition Orders are contained within the bundle and the outstanding hazards before the Tribunal in relation to each flat in order are as follows[1]:

    a. Flat 1 (basement) – overcrowding and space (cat. 1) and costs
    b. Flat 2 (basement)– overcrowding and space; lack of light (cat. 1) and costs
    c. Flat 3 (ground) – overcrowding and space; noise (cat. 2) and costs
    d. Flat 4 (ground) – costs
    e. Flat 5 (first floor) – costs
    f. Flat 6 (First floor) – overcrowding and space and costs

[1] The location of each flat is generally understood by the parties

g. Flat 7 (attic) – costs

Inspection

7. We inspected the property on the 01 October 2018 in the presence of the parties and their various representatives. Nothing new arises out of that inspection except that it was extremely useful for the Tribunal to view the flats and the layout of the property. We noted the fact that the floor space in each flat is very small; that the bathrooms are also very small and that in flat 2, there was only a small window for light which meant that there was no appreciable natural light towards the rear of the flat. In relation to each flat, we noted that since purchasing the property and in order to try to increase the floor space, the appellant has removed the chimney breast. We also noted that there are proposals to move the bathroom in flat 3 nearer to the window with the intention of increasing the usable floor space.

The Hearing

8. Thereafter, the Tribunal convened in at York House to hear evidence and arguments in relation to the issues in this appeal. The appellant was represented by Mr Maddan of Counsel; the Respondent was represented by Ms Phillipson of Counsel. Both counsel made submissions on the issues in the appeal at the start and conclusion of the hearing. We heard evidence from Mr Rotherham, Environmental Health Practitioner, on behalf of the Appellant, who spoke to his reports and we heard evidence from Mr Benson, Principle Housing Officer with the Respondent, who has conduct of the enforcement proceedings under the Act.

9. The issues in this appeal fall to a significant extent on the agreed dimensions of the various flats; the documentary evidence in the bundle as to the relevance of size to the HHSRS and our assessment of the evidence in accordance with the law.

The Agreed Evidence

10. The factual evidence for the purpose of determining the issues in these appeals are not in dispute. Following improvement works, the current dimensions of each flat were agreed at the hearing as follows:

    a. Flat 1 – 14.24 square metres
    b. Flat 2 – 13.74 square metres
    c. Flat 3 – 10 square metres
    d. Flat 4 – 14.09 square metres
    e. Flat 5 – 13.35 square metres
    f. Flat 6 – 11.74 square metres
    g. Flat 7 – 17.47 square metres

11. The layout of each flat is agreed and in relation to flat 3, it is accepted that the size of this flat represents a category 1 hazard.

The Law

12. Putting to one side the issue of costs, Section 2 of the Act defines a category 1 hazard as "a hazard of a prescribed description which falls within a prescribed band as a result of achieving, under a prescribed method for calculation the seriousness of hazards of that description, a numerical score of or above a prescribed amount" and "hazard" is defined as "any risk of harm to the health or safety of an actual or potential occupier of a dwelling…which arises from a deficiency in the dwelling…".

13. Section 5 of the Act places a general duty on a local authority to take enforcement action in relation to category 1 hazards and includes the making of a prohibition order under section 20 of the Act.

14. Section 9 of the Act provides that the "appropriate national authority may give guidance to local housing authorities" in relation to exercising their functions in relation to prohibition orders and sub-section (2) provides that a "local housing authority must have regard to any guidance for the time being given under this section."

15. Appeals to this Tribunal are dealt with under Part 3 of Schedule 2 to the Act and generally the appeal is to be "by way of a re-hearing" with the tribunal having the power to "confirm, quash or vary the prohibition order". In relation to each appeal (although in one appeal the existence of a cat. 1 hazard is not in dispute), the appellant is seeking to have the prohibition orders quashed.

16. The question as to the approach of the Tribunal to the question of a rehearing was considered in *Clark v Manchester City Council* [2015] UKUT 0129 (LC), a decision[2] of the Upper Tribunal which Mr Maddan made liberal reference to throughout the proceedings. Suffice it to say that whilst it is clear from the body of this decision and reasons that we prefer the approach of the respondent to the issues in dispute, we have decided the appeal by reference to our own expertise and judgment by way of a rehearing.

17. Regulations made under the Act, include the Housing Health and Safety Rating System (England) Regulations 2005 ("the Regulations") and regulation 3 prescribes for a description of hazard as:

[2] Little else of significance for the purposes of the present appeal in our view arises out of the decision except for the proposition that it is permissible for a Local Authority to give guidance to its officers and the public as to when a room might be too small, save that there should be the ability to depart from that guidance in appropriate circumstances. The present appeal is not one where guidance has been set by the respondent.

> "A hazard is of a prescribed description for the purposes of the Act where the risk of harm is associated with the occurrence of any of the matters or circumstances listed in Schedule 1.

18. Schedule 1 includes: "11 Crowding and space – A Lack of adequate space for living and sleeping";13 "Lighting – A lack of adequate lighting" and "14 Noise – Exposure to Noise".

19. Regulation 5 provides that an "inspector must – (a) have regard to any guidance for the time being given under section 9 of the Act in relation to the inspection of residential premises".

20. Schedule 2 to the Regulations sets out the classes of harms which might occur from exposure to a hazard. These range from Class I "extreme" to Class IV "moderate". For each Hazard, averages are supplied for the likelihood of the hazard occurring in property of various ages and for the average resultant classes of harm.

21. Thereafter, regulation 6 sets out the method by which, once a prescribed hazard has been identified and in circumstances where the inspector considers it necessary, the seriousness of that hazard is to be calculated by assessing the likelihood of a member of the vulnerable age group suffering a potentially harmful occurrence in the next twelve months and the possible harm outcomes that could arise from such an occurrence. The result of that calculation is a numerical score as set out in the table to regulation 7 which defines whether a hazard is (by reference to regulation 8) a category 1 (bands A, B and C) or a category 2 (bands D to J).

22. Finally, and notwithstanding section 9 of the Act, the regulations themselves provide for a considerable degree of discretion on the part of the "inspector" in carrying out the functions of the local authority under the Act and as a result, in our view a considerable degree of expertise is required of the inspector in assessing firstly, whether a hazard exists and secondly, the seriousness of that hazard.

The Evidence and our Assessment of the Evidence

23. As mentioned above we had before us the following relevant evidence, which we considered in our deliberations:

    a. The inspection reports carried out under the provisions of the HHSRS, of Mr Benson as exhibited to his Statement made for the purposes of these proceedings. We also heard oral evidence from Mr Benson and he was cross questioned by Mr Maddan on his evidence.
    b. The expert report of Julia Park, architect and Head of Housing Research at Levitt Bernstein. Ms Park had also supplied an additional letter and enclosure dated 27 September 2018 dealing with a more recent issue.

c. The statements of Daniel Benson, Helen Farrar and Joanne Hartley (although these statements provided useful background information they were unnecessary for the purposes of our deliberations).
d. The report and oral evidence of Mr Paul Rotherham, Environmental Health Practitioner on behalf of the appellant, together with his enclosures, dated 26 January 2018. Mr Rotherham had added to this report by way of further reports on the 17 September 2018 and again on the 28 September 2018. The latter was handed in at the hearing, but no objections were made to this late additional evidence. Mr Rotherham also gave oral evidence at the hearing and again he was cross questioned by Ms Phillipson.

The Report of Julia Park

24. At the hearing Mr Maddan commented on the absence of Ms Julia Park whom he wanted to cross question. We do not think there was any need for Ms Park to have attended. There was no request for her attendance at the hearing and we could see no benefit in her being cross questioned before us. What she states in her report is, in our expert view, fairly self-evident (that one's living environment – particularly space - is important to mental well-being) and that there is good research and information to back that up: Ms Park's evidence lists a number of available reference sources for her report. Further, Ms Park makes no specific reference to the facts in the present appeals and as a general indication of the need for living space and how a lack of space might affect an occupant we think that the report is reliable and relevant to our deliberations.

25. In any event, the appellant had the alternative expert evidence of Mr Rotherham who accepts, in relation to one flat (flat 3), that a category 1 hazard exists. It is hard to understand, therefore, why the appellant would want to cross question Ms Park on the contents of her report when it, itself, accepts that living space is important.

26. Accordingly, we accept Ms Park's report in its entirety as a useful starting point for determining the outcome of the calculation in regulation 6 of the Regulations.

The Evidence of Mr Benson and Mr Rotherham

27. We were impressed by the evidence of Mr Benson. Firstly, and we will deal with this in more detail below, we thought his justifications for the calculations set out in the reports at pages 83 to 152.34 were meticulous; secondly, under close cross questioning from Mr Maddan, he was able to expand and support his conclusions by reference not only to the report of Ms Park, but also to additional research and guidance as set out in his statement at paragraphs 10 through to 16 (including the production of CAD drawings utilised to assess the extent of any potential hazard); and thirdly, we were satisfied that Mr

Benson's approach to the calculation under the Regulations is quite simply the correct approach. Whilst we accept that there is relevant national authority guidance on the approach to assessing housing hazards, including one relevant worked example, we think that Mr Benson's approach to drawing upon a wider range of material is appropriate.

Our own Assessment of the Issues

General Assessment

28. We are satisfied on the basis of our inspection of the property and arising out of our own expert evaluation of the various flats that they constitute a category 1 hazard to occupiers. We arrive at this conclusion for the same reasons as the respondent and we find ourselves in total agreement with the views expressed by Mr Benson, whom we have already indicated we found a most impressive witness.

29. In our view every flat in the property might properly be determined to constitute a category 1 hazard on account of a lack of adequate space for living and sleeping and in relation to flat 2, also a lack of adequate lighting.

Bristol Worked Example No. 2, Crowding and Space

30. The only relevant worked example, as was discussed at the hearing, relates to a bed-sit with an internal floor space of 9 square metres and intended to be used as a kitchen, living room and bedroom. The plan of the bedsit includes space for a single bed, a wardrobe, a "work surface" and cooker. The "likelihood" factor is assessed at 1/100 and percentage outcomes for the 4 classes are as follows: Class 1: 10%; Class II: 10%; Class III: 31.6% and Class IV: 48.4%. The result is a band C, Category 1 hazard. Mr Rotherham made much of the fact that Mr Benson had increased the likelihood of harm from 1 in 100 to (at worst) 1 in 6. Mr Rotherham had used a likelihood of 1 in 1000. Mr Benson justified his assessment with reference to more recent research and published standards such as the Nationally Described Space Standard (2015) which have been issued since the HHSRS was originally drawn up (see below). The HHSRS itself requires the operator to keep up to date with published research and other relevant information (HHSRS p25). Mr Rotherham could not readily explain why he had decreased the degree of likelihood from 1 in 100 as per the worked example to 1 in 1000.

31. We accept that consideration of this worked example is relevant. However, firstly, it is now nearly 12 years old and is not necessarily relevant to more modern standards; secondly, it relates to a bedsit and the parties were at pains to agree that the flats in issue were not bedsits (i.e. these flats are places where a person will have to spend the whole of their daily life); and thirdly, we are satisfied that the report of Julia Park and the other material relied upon by Mr Benson are also relevant considerations which need to be considered alongside the worked example. We note in particular that the bedsit in the worked example

has nowhere to sit and eat; nowhere to place a chest of drawers and includes only a single bed (which in our view is outdated by modern day standards).

32. Accordingly, we consider the Bristol worked example as only the starting point to our deliberations.

We also have regard to the relevant sections of February 2006 Operating Guidance and in particular the Hazard Profiles in Annex D for psychological harm arising out of space and crowding (pages 91 – 94). However, again we note that the guidance has only limited relevance to the type of flat in issue in these proceedings.
Other Sources of Guidance
Nationally Described Space Standard – 2015

33. We agree with the Respondent that this is a much more useful consideration for determining the degree of likelihood in relation to these flats. Firstly, it is much more up to date having been developed over a number of years (see section 2.0 of Julia Park's Statement – page 14 of the Respondent's bundle); secondly, whilst it prescribes minimum standards for new dwellings only and states that it "has no other statutory meaning or use" we can see no reason why it cannot be used as a tool for helping an "inspector" making an assessment under the HHSRS; and thirdly, there is no prohibition under the HHSRS in having regard to other sources of information, just that the technical guide has to be one of them. In fact, the Operating Guidance states that inspectors should "keep up to date with published research and other relevant information…".

34. It follows that we entirely agree with Mr Benson when he states in relation to each of the flats that "If a single bedroom alone must be between 6.51m2 and 7.5m2 and a one-person self-contained unit of accommodation should ideally be at least 37m2 it is extremely difficult to envisage how the combined activities of living, sleeping, cooking and eating can be safely accommodation in just [the size of each flat] of floor space."

35. These flats are therefore extremely small when compared to those required by the NDSS.

NHF – Housing Standards Handbook (replaces the former HQI system)
The Metric Handbook – Planning and Design Data

36. Both of these draw upon more modern considerations in relation to the appropriate size of accommodation for a class of occupier. We note that the Operating Guidance suggests that the predecessor to the Housing Standards Handbook is a source of guidance when assessing the hazards of crowding and space as is the Metric Handbook. The first suggests that the NDSS reference to 37m2 should be met in relation to one-person self-contained accommodation (thus separating the various activities of daily life which would have to be carried out in a such a

flat). The second handbook states that, for example, a living room should be at least 11m2; a dining kitchen should be 8m2 and a bedroom for 1 should be 6.5m2 giving a gross internal area of 25.5m2.

37. Finally, we also note that minimum space standards in relation to HMOs came into effect from the 1st October 2018, SI 2018 No.221, and that this provides for a single bedroom to be a minimum or 6.51m2 and a double 10.22m2.

38. The flats in relation to these appeals vary between 10m2 and 17.47m2 (we have not forgotten that in relation to some of the flats the prohibition order has been revoked). They are all significantly smaller than the minimum requirements for new build accommodation. It has to follow, in our view, that a hazard of a prescribed description exists (crowding and space) and that, taking account of the Operating Guidance and the other materials set out above, that it is appropriate to calculate the seriousness of that hazard.

39. In our view Mr Benson is entirely correct when he correlates living in a small cramped room, with insufficient space to separate out different household activities (sleeping, cooking, eating, socialising and relaxing, for example), with increased anxiety and distress. During the course of the hearing we considered the activities of daily life which a person, confined to one small room, might have trouble carrying out, such as establishing and building up relationships with other people (including relationships with a partner); inviting relatives and in-laws around; space to exercise; space to place and keep personal possessions; the inability to keep a double bed (in our view it is entirely correct that people no longer wish to sleep in single beds) and such like. Even discounting the effects of sharing accommodation with a stranger (as might occur in a bedsit) we are firmly of the view that the psychological effects of living in any of these flats would result in there being an increased likelihood of psychological harm occurring over a 12-month period and that this risk is much higher than the national average.

Other Local Authority Areas

40. Finally, some mention was made during the hearing of the approaches to other local authority regions to the issue of space and overcrowding, with, for example, Southampton being mentioned as a local authority which allows particularly small flats to exists in its region. Suffice it to say that we did not find reference to other regions particularly useful. Flats in other regions were not before us, we have not visited them and neither did we have any evidence or arguments on why this might be the case. Accordingly, we placed no weight on the fact that Southampton (or some of the London boroughs, for that matter) may tolerate the occupation of small flats.

Degree of Likelihood for Each Property

41. As a result, taking the facts identified above into account, and given the limited space in each flat we thought that Mr Benson's approach to assessing the degree of likelihood to be correct and agreeing with him we would, in accordance with regulation 6(2) assess each flat as coming within the following ranges in relation to crowding and space (with the representative scale point of range):

Flat 1 (14.24m2)	24 – 13	1 in 18
Flat 2 (13.74m2)	24 – 13	1 in 18
Flat 3 (10m2)	7.5 – 4	1 in 6
Flat 6 (11.74m2)	13 – 7.5	1 in 10

42. We were also satisfied that the lack of lighting in flat 2 resulted in an unreasonable requirement for an occupier to rely upon electric lighting – most likely hot spotlights in the ceiling. Again, we agree with Mr Benson that this is highly likely to give rise to harm within the following 12 months and that the range 4 – 2.5 is appropriate with a score of 1 in 3.

43. We did not get the impression from our inspection that flat 1 constituted a hazard in relation to the lack of lighting now that the windows had been increased in size and other adaptations had taken place to alleviate this problem. We appreciate that Mr Benson's justification includes reference to the fact that the flat is below ground level but the limited outlook in itself is not significant enough to enable us to determine that a hazard of a prescribed description exits. Accordingly, whilst this flat remains a category 1 hazard it does not do so as a result of a lack of adequate lighting (Schedule 1, 13 – Lighting).

44. It follows that we do not agree with Mr Rotherham's assessments in relation to the representative scale point range of 1 in 1000 for flat 1; 1 in 1000 for flat 2; 1 in 100 for flat 3 and 1 in 560 for flat 6. For the reasons set out above, we do not agree with his conclusions.

45. It follows from the above that we also agree with Mr Benson as to the numerical score for the seriousness of the hazard in relation to each flat. It is not necessary to set out the calculation in this decision notice (so as not to overly complicate matters) but suffice it to say that we have checked Mr Benson's calculations in relation to the issue of space and crowding for each flat and lighting for flat 2, and we do not depart from them. Nevertheless, we also note that a Category 1 hazard would be appropriate for each of these flats even if the likelihood of harm was 1 in 100 in each case, as in the Bristol Worked Example.

46. The appropriate Band for each flat in relation to matter 11, Crowding and Space and in relation to matter 13, lighting for flat 1 is as follows:

Flat 1	Band A (crowding and space)
Flat 2	Band A (crowding and space)
Flat 2	Band C (lighting)

Flat 3 Band A (crowding and space)
Flat 6 Band A (crowding and space)

Costs

47. As mentioned above, 3 of the prohibition orders (for flats 4, 5 and 7) were revoked prior to the hearing but the issue of costs remains.

48. Section 49(1)(b) provides a power for the Local Authority to "make such reasonable charge as they consider appropriate as a means of recovering certain administrative and other expenses incurred by them" in relation to the service of a prohibition order.

49. Section 49(7) provides that where "a tribunal allows an appeal against the underlying notice or order mentioned in subsection (1), it may make such order as it considers appropriate reducing, quashing, or requiring the repayment of, any charge under this section made in respect of the notice or order".

50. We have not heard any appeal against the remaining three flats as the prohibition orders were revoked. The applicant argues that because the prohibition orders were revoked, then the Local Authority has no power to make a reasonable charge.

51. Section 50(8) provides that for "the purposes of subsection (7) – (a) the withdrawal of an appeal has the same effect as a decision which confirms the notice or order, and (b) reference3s to a decision which confirms the notice or order are to a decision which confirms it with or without variation."

52. The appellant withdrew all three appeals in April 2018 and it seems to us that the Tribunal has no jurisdiction to consider the issue of costs. Accordingly, they remain payable.

53. However, if we were to make a decision on the issue of costs in relation to each of these three flats and for the reasons set out above, we would have found that they constituted a category 1 hazard on the grounds of space and overcrowding. We visited each flat, and they were all very small (flat 4, 14.09m2; flat 5, 13.35m2 and flat 7 17.47m2). Flat 1, whilst larger than the other flats, is in the roof space of the property and has sloping ceilings which limit head height. Cumulatively, therefore the usable area of this flat is limited to a similar extent to the other properties.

54. We were satisfied that the Local Authority was entitled to serve prohibition orders in relation to each of these flats and we would not have allowed the resulting appeals had they not been withdrawn by the Appellant.

55. We accept the reasons why the Local Authority chose to revoke the orders in that it wished to encourage the owner of the property to bring the property back into use as living accommodation rather than leave it empty (in the hope that larger units might be created) but we are satisfied that an underlying category 1 hazard persists in relation to each of these flats and that their use as self-contained units of accommodation in their current state would constitute a hazard to the health of the occupiers.

56. We therefore confirm the costs of the Respondent in the sum of £751.61 which we think are reasonable.

Signed: Phillip Barber, Judge of the First-tier Tribunal

Dated 26 October 2018