



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

**HMCTS code (audio,  
video, paper)**

**P: PAPERREMOTE**

**Case Reference** : **CAM/22UN/HNA/2019/0021-0026**

**Property** : **7 & 9 Hayes Road, Clacton-on-Sea, Essex CO5  
7TX**

**Applicant** : **Lystra Dorval**

**Respondent** : **Tendring District Council**

**Type of Application** : **Application for Permission to Appeal**

**Tribunal Members** : **Tribunal Judge S Evans  
Mr Gerard Smith MRICS FAAV REV**

**Date of Decision** : **4 January 2021**

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**DECISION**

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

This has been a remote decision on the papers. The form of remote decision was P:PAPERREMOTE. A hearing was not held because it was not necessary; all issues could be determined on paper. The documents we were referred to are the documents described in the decision dated 5 November 2020 and the Applicant's grounds of appeal on or about 9 November 2020.

### **DECISION OF THE TRIBUNAL**

1. The Tribunal has considered the grounds for appeal and determines:
  - (a) it will not review its decision; and
  - (b) permission be refused.
2. In accordance with section 11 of the Tribunals, Courts and Enforcement Act 2007 and rule 21 of the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010, the applicant may make further application for permission to appeal to the Upper Tribunal (Lands Chamber). Such application must be made in writing and received by the Upper Tribunal (Lands Chamber) no later than 14 days after the date on which the First-tier Tribunal sent notice of this refusal to the party applying for permission to appeal.
3. The Upper Tribunal (Lands Chamber) may be contacted at: 5th Floor, Rolls Building, 7 Rolls Buildings, Fetter Lane, London EC4A 1NL (tel: 020 7612 9710); or by email: lands@hmcts.gsi.gov.uk .

### **REASON FOR THE DECISION**

4. The reason for the decision is that the Tribunal had considered and taken into account all of the points now raised by the Applicant, when reaching its original decision.
5. The original Tribunal's decision was based on the evidence before it and the Applicant has raised no legal arguments in support of the application for permission to appeal.
6. For the benefit of the parties and of the Upper Tribunal (Lands Chamber) (assuming that further application for permission to appeal is made), the Tribunal has set out its comments on the specific points raised by the Applicant in the application for permission to appeal, in the appendix attached.

### **APPENDIX TO THE DECISION** **REFUSING PERMISSION TO APPEAL**

For the benefit of the parties and of the Upper Tribunal (Lands Chamber), the Tribunal records below its comments on the grounds of appeal.

### Specific comments on the grounds of appeal

1. The Tribunal did not find that the Respondent had failed to explain its decision-making process. It found that the Respondent had not recorded it, but that it had done its best to explain the figures arrived at: paragraph 59 of the decision.
2. Whilst the Tribunal was concerned by the Respondent's emails (paragraph 60 of the decision), it did not find that any bad faith on the Council's part. The Tribunal was aware that the decision as to penalty was not taken by Mr Fenton-Jones alone. The Tribunal rejected the Applicant's argument that the appeal should be allowed on such a basis: paragraph 61 of the decision.
3. The Tribunal was obliged to give some deference to the Respondent's decision, despite the Respondent's lack of rigour. This was not a case where the Tribunal was entitled to depart from the Policy of the Respondent, and the Tribunal was required to assess harm in the light of the stated severity and harm Tables.
4. The Tribunal notes that at the hearing the Applicant did not advance any case that the levels of harm adopted by the Respondent were flawed. Nor does the Applicant now suggest what category of harm should be substituted in relation to each and every breach proven.
5. The Applicant is wrong to assert that Category 1 in the Harm Factors Table in the Respondent's Policy is limited to "serious adverse effect or high risk of serious adverse effect". It continues "Vulnerable people to be taken into account". The Tribunal considered that many (but not all) of the defects proven presented a high risk of a serious adverse effect on the occupiers who were vulnerable by reason of their social circumstances, as evidenced by PC Southgate.
6. The Tribunal's assessment of harm was based on its experience and knowledge as an expert Tribunal. It did not place great reliance on the Respondent's HHSRS Assessment Forms. The Tribunal did not, nor was it required, to conduct its own separate HHSRS assessment. The Tribunal considered the facts of each breach against the text in the Tables in the Policy, in the light of the evidence as a whole.
7. Pursuant to the above reasons, the Tribunal refuses to exercise its discretion under rule 6(o) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rule 2013 to suspend the effect of the Tribunal's decision dated 5 November 2020. Any such application should be made to the Upper Tribunal, where appropriate.

**Name:** Tribunal Judge S Evans      **Date:** 4 January 2021