



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

**Case Reference** : CHI/24UL/HEP/2021/0001

**Property** : 5 Ettrick Court Cross Street Farnborough  
GU14 6BQ

**Applicant** : Janna Fuller

**Representative** :

**Respondent** : Rushmoor Borough Council

**Representative** : John Corrie Private Sector Housing

**Type of Application** : Appeal against emergency Prohibition  
Order  
Section 43 and 45 Housing Act 2004

**Tribunal Member(s)** : Judge Tildesley OBE  
Miss C Barton MRICS

**Date and venue of  
Hearing** : 25 August 2021  
Havant Justice Centre by CVP

**Date of Decision** : 31 August 2021

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**DECISION**

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## **Background**

1. On 29 July 2021 the Applicant appealed a decision of Rushmoor Borough Council (“the Council”) dated 5 July 2021 to impose an emergency prohibition order in respect of the property in accordance with section 43 of the Housing Act 2004 (“2004 Act”).
2. On 6 August 2021 the Tribunal directed a hearing of the appeal on 25 August 2021 at Havant Justice Centre. The parties were given the option of joining the hearing remotely. The parties were required to file and serve their statements of case by 20 August 2021.
3. On 25 August 2021 the Applicant appeared in person. Mr Peter Savill of Counsel appeared for the Council. Mr John Corrie, Private Sector Housing Officer, Mrs Suzanne Berry, Private Sector Housing Officer, and Mrs Hilary Smith, Private Sector Housing Manager gave evidence for the Council. All persons attended the hearing by means of the video link on the CVP platform. The Tribunal admitted in evidence the parties’ statements of case. The Council’s statement of case included photographs of the property taken at the inspection on 5 July 2021.
4. At the end of the hearing the Tribunal announced its decision to dismiss the Appeal. Judge Tildesley OBE stated that the Tribunal would supply the parties with a summary of its reasons but reserved the right to expand upon its reasons in the event of an application for permission for appeal.
5. Under section 45(3) of the 2004 Act, the Appeal is by way of re-hearing.

## **Findings of Fact**

6. The property is a three-storey end of terrace building which is licenced as a House in Multiple Occupation (HMO) for up to nine tenants.
7. On 5 July 2021 Mr Corrie visited the property with the Applicant following complaints from several residents received by the Council’s Planning Department, regarding a leak to the front porch and the erection of an unauthorised outbuilding in the garden. On entering the kitchen Mr Corrie noticed that there had been a recent fire to the property evidenced by smoke staining to the ceiling above the cooker hood and to the tiling above the cooker hobs. The Applicant confirmed that a tenant had started a fire accidentally. Mr Corrie then noticed that the hardwired interlinked heat detector head to the kitchen ceiling had been removed and placed on the kitchen surface. The Applicant acknowledged this and stated that a tenant had removed it. Mr Corrie then entered the ground floor communal hallway where the fire panel was located and immediately noticed that there was a fault with the fire alarm. The Applicant confirmed that the fire alarm was not working. Mr Corrie decided to contact Mrs Smith, his manager, and it was agreed to carry out a full inspection of the property and an Housing Health and

Safety Rating System (HHSRS) assessment with another officer, Mrs Berry.

8. At the end of the inspection Mr Corrie together with Mrs Smith advised the Applicant that there was an imminent risk to the tenants and that an emergency prohibition order would most likely be served but he needed to carry out an HHSRS assessment first. Mr Corrie formed this view because the property was a three storey HMO with nine occupants with no working fire alarm, the evidence of a previous fire, and the poor condition of the property. Following the HHSRS assessment which identified two category 1 hazards and five category 2 hazards, the Council served an emergency prohibition order on the Applicant in respect of the property.
9. The HHSRS assessment is exhibited at [40-46] of the Council's statement of case. For the purposes of this Application the Tribunal is concerned with the two category 1 hazards of "Fire" and "Falling on Level Surfaces". The Tribunal required Mr Corrie to justify the scoring of the two category 1 hazards, and also asked the Applicant about whether the deficiencies identified by Mr Corrie existed at the property on 5 July 2021. The Tribunal had before it the photographs taken by the Council on 5 July 2021.
10. Having heard from Mr Corrie and the Applicant the Tribunal was satisfied that the identified deficiencies existed on the 5 July 2021, and that based on those deficiencies Mr Corrie was justified in increasing the likelihood of harm and changing the proportions for the spread of harm outcomes from the average score for "Houses 1946 -79" in the HHSRS Operating Guidance published in February 2006. The Tribunal, therefore, finds that the hazard score for "Falling on Level Surfaces" was 3,345 and the hazard score for "Fire" was 5,958. A category 1 hazard has a score of 1,000 or above.
11. The Tribunal had regard to the Applicant's admissions at the hearing that a fire had taken place at the property, albeit limited to a tenant who had set light to paper within the property, that tenants smoked in their rooms, that she knew that the fire alarm had not been working for two months (a tenant had told Mr Corrie it had not been working for 18 months) and that she regularly visited the property and was aware of the deficiencies with the property identified by Mr Corrie.
12. The Tribunal concluded that the hazards at the property posed an imminent risk of serious harm to the occupiers of the property. The Tribunal's conclusion was based on the following facts: (1) three storey HMO registered for nine persons; (2) the property suffered from two category 1 hazards including "Fire"; (3) no working fire alarm, and defects in the fire detection system: (4) escape dangerous because of trailing wires and furniture blocking means of escape; (5) the risks posed by some tenants in respect of setting items on fire in the property and smoking; (6) The Applicant's awareness of these risks and not taking action to minimise them.

13. The Applicant argued that a prohibition order was the “highest of the high” of the potential enforcement actions open to the Council to deal with hazards at the property, and that an improvement notice was a more appropriate course to take. The Tribunal disagrees. An improvement notice would not address the imminent risk posed by the category 1 hazards at the property. The Tribunal accepted Mr Corrie’s evidence that it was not possible for a fire alarm engineer to attend the property at short notice to remedy the defects with the alarm and smoke detection system. The Tribunal was, therefore, satisfied that an emergency prohibition order was the most appropriate course of action to take.
14. The Applicant contended that the Council should help landlords to resolve problems with their properties and provide databases of tenants who have caused difficulties for other landlords. Mrs Smith said that the Council was always willing to give advice to landlords. Mr Corrie informed the Tribunal that there was no record of the Applicant contacting the Council about the property before the action was taken. The Tribunal considers that the Applicant is responsible for the condition of the property and for the vetting of potential tenants, and that she is not entitled to pass on those responsibilities to the Council. The Tribunal observes that the Council’s duties under the 2004 Act are to keep housing conditions under review and take enforcement action whenever a category 1 hazard exists in residential property.
15. The Council specified in the Order remedial action which if taken would result in the Council revoking the emergency prohibition order.
16. On 16 August 2021 Mr Corrie and Mrs Berry inspected the property again in the presence of the Applicant. They found that the remedial works had been completed in respect of the following hazards:
  - Damp and Mould Growth
  - Uncombusted Fuel gas
  - Food Safety
  - Personal hygiene, sanitation and drainage
  - Electrical hazards
  - Falling on the level surfaces etc.
17. Mr Corrie and Mrs Berry also noted that although the fire alarm had been repaired, with no fault sign registering on the panel, several of the detectors and some of the call points were flashing red. Also the Applicant was unable to present a certificate confirming that the fire alarm was in good working order and complied with the relevant British Standard. Mr Corrie said that the Council would not revoke the emergency prohibition order until it received the certificate for the fire alarm. Mr Corrie added that he was unable to access some of the rooms on his inspections. The Applicant said that all remedial works would be completed the week commencing 30 August 2021.

## **Decision**

18. Under section 45 (6)(b) of the 2004 Act, the Tribunal's powers on appeal are to confirm, vary the emergency prohibition order or make an order revoking it as from the date specified in the Order.
19. As this is an appeal by way of rehearing the Tribunal is entitled to make its own decision on the facts and is not restricted to reviewing the Council's decision.
20. The Tribunal is satisfied on the facts found that
  - There were two category 1 hazards at the property on the 5 July 2021, namely: "Fire" and "Falling on Level Surfaces".
  - The hazards involved an imminent risk of serious harm to the occupiers of the property.
  - There was no Management Order in force in relation to the property.
  - The Prohibition Order contained the required information as specified by section 44 of the 2004 Act.
  - The Applicant had not completed the remedial actions as specified in the Order.
21. The Tribunal decides to confirm the making of an emergency prohibition order on 5 July 2021 and dismisses the Appeal.
22. The Tribunal observes that if the Applicant completes the remedial actions to the satisfaction of the Council she is entitled to apply to the Council for revocation of the order, and has a new right of appeal if the Council refuses to revoke the Order.

## **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. The application should be send by email to [rpsouthern@gov.uk](mailto:rpsouthern@gov.uk).

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).