



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

**Case Reference** : **CAM/38UE/HPO/2019/0002**

**Property** : **67 High Street, Milton, Abingdon, Oxfordshire  
OX14 4EJ**

**Applicant** : **Anthony B P Mockler**

**Representative** : **In person**

**Respondent** : **Vale of Whitehorse District Council**

**Representative** : **Mr Nigel Johnson, Lawyer and Mr Nigel  
Shepherd Counsel, Private Sector Housing  
Officer**

**Type of Application** : **An appeal against a prohibition order,  
Schedule 2 part III Housing Act 2004**

**Tribunal Members** : **Tribunal Judge Dutton  
Mrs S Redmond BSc (Econ) MRICS**

**Date and venue of  
Hearing** : **Milton Hill Hotel, Abingdon, Oxfordshire  
OX13 6AF on 19<sup>th</sup> September 2019**

**Date of Decision** : **4th October 2019**

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**DECISION**

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## DECISION

**The Tribunal dismisses the appeal made by Mr Mockler against the prohibition order but varies the schedule of works as set out below.**

### BACKGROUND

1. By an application dated 26<sup>th</sup> June 2019 Mr Mockler appealed against the issue of a prohibition order by the Vale of Whitehorse District Council (the Council) on 4<sup>th</sup> June 2019. The prohibition order is in respect of the property 67 High Street, Milton OX14 4EJ (the Property).
2. The Council, after an inspection which appears to have been compliant with the legislation in that notice was given to Mr Mockler, assessed that the Property was subject to excessive cold and contained electrical hazards. After conducting an HHSRS assessment the Council came to the conclusion that these were category 1 hazards and set out in the schedule to the prohibition order the remedial action required to be taken. We will return to that in due course.
3. It is appropriate to note that the Property had previously been occupied and at that time the Council, following an inspection, had issued an improvement notice dated 11<sup>th</sup> March 2019. That was based on the same assessments that gave rise to the later prohibition order, the subject of this appeal. However, the tenant of the Property subsequently vacated and accordingly the improvement notice was revoked and replaced with the prohibition order.
4. Mr Mockler appeals against the prohibition order in respect of four grounds set out on his appeal. They are as follows:
  - *"Appeal on grounds of equity. The tenant having left owing over £4,000 in unpaid rent I have no money at the moment to do all these repairs/improvements and need time to save up.*
  - *On the ground of human rights. Though myself and my wife are OAPs we do not have anything like systems demanded in respect of HHSRS2 – excess cold and yet survive into old age.*
  - *On ground of climate change. These requirements seem ridiculous and against all common sense (as regards the excess cold) “especially in the South of England.”*
  - *On the ground of sheer practicality re HHSRS23. Almost impossible to get electricians to come out to inspect the premises (three have promised to come – and just not turned up) are at wits end!"*
5. Further and in support of his application he provided copies of an article in the Daily Mail dated 7<sup>th</sup> February 2019 concerning potential climate change and a copy of an article by Mr Dominic Lawson again in the Daily Mail dated 27<sup>th</sup> May 2019. We have noted these but again will comment on the relevance in due course.
6. In addition to the Applicant's bundle the Respondent Council had produced a bundle containing the statement of reply to the appeal notice and witness

statement by Mr Nigel Johnson a private sector housing officer with the Council. That had a number of exhibits attached to it including the HHSRS assessment in respect of excess cold but the assessment in respect of the electrical failings was not included, although as a result of the hearing this is not a matter that is of particular importance.

### **INSPECTION**

7. We inspected the subject Property prior to the hearing. It is an end of terrace, two storey house with a tiled roof. There are wooden windows to the front and metal casement windows to the rear. The Property has the look from the exterior of being somewhat dilapidated, not helped by an unkempt rear garden.
8. Thanks to Mr and Mrs Mockler, who attended, we were able to make an internal inspection of the Property.
9. We noted there was a kitchen diner which was fitted with a boiler providing hot water. The room was of a reasonable size. The windows were metal. There appeared to be a defunct wall heater. In the living room was a gas fire modelled to look like a wood burning stove, which at the time of our inspection was lit and was producing good heat. There was no central light and a limited number of plug sockets. On the same floor level was a bathroom which had a bath, wash hand basin and low level WC. An electric shower was included. Again this had metal windows. There was no heating in this room.
10. Rising to the first floor was a fairly tight stairway leading to three bedrooms. To the rear was a double bedroom which appeared to have a vent to the outside which had no internal cover. They were metal windows and there did seem to be a gas heater in situ but there is no indication that this had been tested and we could not tell whether it worked or not. To the front on the right hand side when looking out of the Property was another double bedroom although somewhat oddly shaped. This likewise had what appeared to be a gas heater. In the left hand front bedroom which was single only there was no heating and the socket appeared to have become detached from the wall.
11. The Property appeared to have been the subject of an electrical inspection in July of this year. The electrical fittings, both sockets and wall switches, appeared to be relatively new but we could not determine whether the wiring had been renewed. There was a Bakelite switch to the light to the bathroom. There was also a switch which appeared to provide power to the shower which had what seemed to be some exposed wiring. The Property did appear to be structurally sound.

### **HEARING**

12. After the inspection we held a hearing at the Milton Hill Hotel. This was attended by Mr and Mrs Mockler and Miss Gray who came to take notes. The Council were represented by Mr Shepherd as the Lawyer and Mr Johnson the Housing Officer who had the conduct of the case.
13. Opening the Respondent's case Mr Johnson said that the grounds of appeal lacked any relevance. The outstanding rent was nothing to do with the

prohibition order nor were the personal circumstances or climate change. He accepted that the electrics appeared to have been inspected on 25<sup>th</sup> July 2019 but no details had been supplied and the Council would expect to receive a certificate from the electrical contractor who carried out the inspection.

14. He told us that the Council had tried to resolve these matters prior to serving either the improvement notice or the prohibition order but that had not been possible. He also told us that Mr Johnson had rechecked his HHSRS scores and had confirmed that they were appropriate.
15. Mr Johnson then gave evidence. He provided a witness statement which was within bundle and which we had noted. He confirmed that he was not an environmental health officer but did have extensive experience in building matters. He had done the HHSRS course and been involved with private housing issues for a number of years.
16. He told us on 4<sup>th</sup> December 2018 the tenant had reported problems to the Council and a colleague had inspected at the request of the tenant and had then sent a letter to Mr Mockler setting out their concerns. Subsequently, on 21<sup>st</sup> February 2019 Mr Johnson went to the Property to carry out a formal inspection which highlighted the lack of heating and the electrical issues. He told us that in the downstairs lounge there were only two sockets available and on his inspection there were a number of extension leads leading to heaters particularly in the bathroom. He did confirm that there appeared to be only one Bakelite switch that to the light in the bathroom. He also said that there were some exposed wires at the switch in the small rear lobby and that the heater in the kitchen appeared to be defunct. He had been told by the tenant that none of the heaters upstairs were working but he did not check them.
17. His assessment in respect of excess cold led him to believe this was a category 1 hazard. He told us that he had used worked examples upon which to base his assessment and a copy of the calculation was included within the papers. He was concerned there was no form of heating which gave control to the tenants and accordingly he had assessed the lack of heating as a category 1 hazard.
18. He did accept that the heating system to be installed did not have to be a gas fired system. It could be storage heaters which did not use the most expensive form of electricity.
19. Insofar as the category 1 hazards for the electrics are concerned, no worked example was provided by he told us that he had conducted an HHSRS assessment on the same basis as he had the excess cold and that this had lead him to the conclusion that the problems with the electrics as they presently stood was a category 1 issue.
20. There were no questions from Mr Mockler.
21. Mr Mockler then gave evidence to us. He told us that he was the owner of Milton Manor House, Milton which was a grade I listed house which he had inherited from his mother in 1990. He produced a photograph by way of postcard showing an extensive and impressive manor house. Apparently the estate owned four

cottages, which were used to provide a maintenance fund to enable Milton House to be kept in repair. The income from the cottages was therefore vital but there were now at least two which were empty as a result of difficulties with the tenants. He gave us history of the tenants of 102 and 67 High Street who appeared to be related. Both appeared to have left the Property without paying rent and he was not able, at the moment, to recover those arrears. He told us that this meant that two of four properties were empty and the third was due to be similarly vacated. He said this left him in “an awful position” of not having money to do repairs and no income to keep the property in good order.

22. He thought the demands of the Council were excessive and hoped we would put equity before the law.
23. He was of the view that there was a demand for this type of Property particularly at a low rent. He did say that he had now found an electrician who had attended and had carried out an assessment. This obviously led to the certificate attached to the fuse box. However, he did not have that electrical certificate with him. He did, however, produce a letter from CDR Electrical Services dated 16<sup>th</sup> September 2019 setting a proposed works with a possible cost of £1,480. That report appeared to show that extensive works were required to upgrade the electrical system but it made no provision for any form of heating to be included save for a towel rail in the bathroom. To be fair to Mr Mockler he did not dispute the fact that the electrics needed to be attended to.
24. In respect of the heating, he referred us to the article in the Daily Mail and the article by Dominic Lawson and said that he himself would not mind living in the Property. The house in which he lived lacked central heating but that he was used to this and he thought that tenants would accept the Property as it was, given the low level of rent.
25. He did confirm with us that there was no gas certificate in respect of any of the gas appliances and he accepted that this was an error and needed to be put right.
26. There then followed discussions between the parties and the Tribunal concerning a possible way forward. The Council indicated they might accept that the existing gas fires in the bedrooms were acceptable but they needed evidence. They also accepted that night storage heaters were a reasonable alternative to gas central heating but that those need to be powered on the cheaper form of electricity. In respect of the electrical system they, on the face of it, seemed happy enough to accept the report from CDR Electrical Services but only provided they had sight of the actual electrical certificate, which had not been produced. In that regard Mr Mockler agreed to provide both a copy of the electrical certificate following the inspection in July of this year and a further copy of the letter from CDR Electrical Services. Armed with that, the Council said they would consider the electrical situation and if the works set out on the CDR Electrical letter were undertaken within a reasonable period of time, that may well satisfy their requirements.

## **FINDINGS**

27. This was a somewhat sad case. We considered that Mr Mockler was an honest landlord thinking that he was doing his best in the circumstances. However, he seemed to have little or no knowledge of the requirements of the Housing Act and other legislation relevant to private rented accommodation and bearing in mind that he has four properties he may wish to consider whether he retains the services of a professional managing agent to take some of the burden from him. Whether he does or not is a matter for him but he must acquaint himself with the relevant legislative requirements as 'equity' we are afraid will not assist him in this respect.
28. We consider that there is no reason to lift the prohibition order. However, it was clear from the hearing that Mr Mockler was prepared to take steps to regularise the position and that the Council would help him as best they could in the circumstances.
29. We therefore find that the schedule should be amended as follows:
  1. The requirement to fit a gas central heating system is unnecessary. Whilst it is open to Mr Mockler to produce a gas certificate which he needs to do anyway to show that the heaters in the bedrooms upstairs are safe, we cannot help but feel it would be more appropriate if those were replaced with electric night storage heaters. Having a gas fire in a bedroom seems to us not to be the most appropriate form of heating. Accordingly we consider that the best way forward is for Mr Mockler to ask the electrician to give him some idea of costings of providing not only the heated towel rail, which will have to be of sufficient capacity to heat the bathroom, but also to install electric storage heaters in the three bedrooms relevant to the size of those bedrooms. In addition also, the work set out on the letter from CDR Electrical Services will need to be undertaken.
  2. He will need to acquire a gas safety certificate and we consider that an EPC certificate should be obtained which will then confirm whether the windows are satisfactory for the accommodation. Whether he arranges for an EPC certificate to be undertaken before any of the works are done is a matter for him. However, it does seem to us that this is a requirement that he will need to undertake and it is a matter for him whether he does it before or after the works are undertaken.
30. Our view is that the prohibition order remains and should not be revoked until these works have been undertaken. We are satisfied that the HHSRS assessment in respect of excess cold was properly conducted by Mr Johnson and it showing a category 1 hazard the Council really has no alternative but to take action. In respect of the electrical works, although no HHSRS assessment was produced in the papers Mr Mockler freely admitted that the electrical works were required and that he would be undertaking those as soon as he could raise sufficient funds to do so.
31. We hope that it will be possible for both parties to work together to put this Property into good order. When these works have been undertaken it seems to us

that it should rent perhaps for a higher figure than he has currently been charging which may go some way towards ameliorating the cost of these improvement works. With respect to Mr Mockler, the fact that he and his wife may be prepared to live in a somewhat cold and potentially draughtier manor house which has passed to him after centuries' ownership in the family is not really a good enough reason to suggest that tenants of his should similarly occupy the premises that he rents to them.

*Andrew Dutton*

Judge:

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A A Dutton

Date:

4th October 2019

### **ANNEX – RIGHTS OF APPEAL**

1. 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 at the Regional Office which has been dealing with the case.
2. 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.
3. If the application is not made within the 28-day time limit, such application must include a request to 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.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (ie 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.