



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

Case Reference : **LON/00AK/HPO/2022/0003**

Property : **27 Mitchell Road, London N13 6EG**

Applicant : **Andres Lytras**

Representative : **In person**

Respondent : **London Borough of Enfield**

Representative : **Jackie Williams, In-House Case Officer**

Also present : **Natalie Males (Respondent Team Manager), Nick Long (Respondent Enforcement Officer), John Yates (Respondent Fire Safety Officer) and Tina Fasi (Respondent Head of Service)**

Type of Application : **Appeal under the Housing Act 2004 against a Prohibition Order**

Tribunal Members : **Judge P Korn
Mr A Lewicki FRICS**

Date and venue of Hearing : **22 February 2023 at 10 Alfred Place, London WC1E 7LR**

Date of Decision : **21 March 2023**

DECISION

Description of hearing

This has been a face-to-face hearing. The decision made is set out below under the heading “Decisions of the tribunal”.

Decision of the Tribunal

The decision of the Respondent local housing authority is hereby confirmed, and consequently the prohibition orders are confirmed.

Introduction

1. The Applicant has appealed pursuant to paragraph 7(1) of Schedule 2 to the Housing Act 2004 (“**the 2004 Act**”) against three separate prohibition orders served on him by the Respondent in respect of different parts of the Property.
2. The prohibition orders are all dated 29 June 2022. The first order prohibits the use of the ground floor rear left self-contained unit for sleeping and residential occupation. The second order makes the same prohibition in respect of the ground floor right self-contained unit. The third order makes the same prohibition in respect of the rear self-contained outbuilding. Each prohibition order specifies certain alleged hazards.

Applicant’s case

3. In written submissions, the Applicant states that he applied for planning permissions in relation to the Property on 9 December 2021. Whilst awaiting a response to the planning applications he was in contact with Mr Nick Long, the Respondent Enforcement Officer. When planning permission was granted in September 2022, he sought guidance from the Respondent as to the location of the fire doors to two of the units. He made a number of requests to the Respondent via his agents but did not receive substantive replies. He then resolved to use an architect to advise him and to help him to submit an application in respect of the fire doors.
4. Certain works required by the Respondent have been carried out and are available for inspect by the Respondent. The Applicant has also sought to engage the services of a health and safety expert to advise on what needs to be done to address the Respondent’s concerns.
5. The Applicant also states that certain of the occupiers were not served with copies of the tribunal application and with other documents by the

Respondent and that copies were not affixed to the Property until after 4 July 2022.

6. He also submits that there was no valid scheme in place to authorise the issuing of the prohibition orders by Ms Williams or by anyone else other than the Director.
7. In addition, the Applicant states that on 22 June 2022 the Respondent revoked earlier improvement notices served on the Applicant and then served the prohibition orders on 29 June 2022 without any form or dialogue or prior notice, at a time when the Applicant was in correspondence with Mr Long.
8. In relation to the service of the notices, the Applicant states that service was not effected on him until 4 July 2022 and, as a consequence, less than 28 days was afforded to him within which to appeal.
9. The Applicant requests that the prohibition orders be quashed or, failing that, suspended for 12 months.

Respondent's case

10. The Respondent's statement of case is in the form of a witness statement from Ms Jackie Williams, who is a Licensing, Inspections and Enforcement Officer. She states that the Respondent's scheme of delegation as listed within Part 3 of its constitution is the overarching scheme for authority to take decisions and is approved annually. The Respondent approved the constitution in its meeting of 25 May 2022. The minutes of that meeting are in the relevant hearing bundle and they confirm that Councillor Ozaydin moved and Councillor Dey seconded the proposal to agree the Respondent's scheme of delegation as set out in Part 3 of the constitution.
11. Ms Williams' first involvement with the Property was in May 2018 following a referral from a planning enforcement officer. The Property was reported to be occupied as a house in multiple occupation ("**HMO**"), including an occupied outbuilding at the rear. The Respondent is required under the 2004 Act to inspect properties where category 1 or category 2 hazards may exist, and formal letters were sent to the Applicant under section 239 of the 2004 Act requesting access to inspect the Property.
12. The Applicant advised that he was not available on any of the proposed dates, but he finally agreed to an inspection on 29 November 2018. Ms Williams and a colleague carried out an inspection of the whole

Property and the Applicant was present. Ms Williams confirmed that the Property was occupied as an HMO and advised the Applicant that he should submit an HMO licence application. She also identified category 1 and category 2 hazards, including serious fire safety issues as there was no safe means of escape route from the ground floor rear dwellings and outbuilding and there were insufficient fire safety measures throughout the Property. She and her colleague discussed the fire safety and other deficiencies with the Applicant, and Ms Williams took photos of the hazards identified. The Respondent later carried out an assessment under the HHSRS Enforcement Guidance and determined there were category 1 and category 2 hazards present in the Property.

13. On 4 December 2018 Ms Williams served on the Applicant a 'Declaration of a House in Multiple Occupation' notice. The Applicant appealed against the notice on the ground that he did not consider the Property to be an HMO. The HMO Declaration was later withdrawn due to a procedural impropriety. Due to the HMO Declaration being invalid by reason of procedural impropriety, the Respondent did not rely on it and requested that it be quashed.
14. The Respondent then considered the HHSRS Enforcement Guidance and its Private Sector Housing Enforcement Policy and concluded that the most appropriate action at that stage was to serve an improvement notice. Although the Applicant had removed the cooking facilities from the ground floor shared kitchen, the means of escape from the rear dwellings were still compromised by having to pass through the main building and there were insufficient fire safety measures provided. On 31 January 2019 Ms Williams served an improvement notice on the Applicant. It contained section 11 schedules for fire safety and excess cold and section 12 schedules for damp and mould, electrical hazards, falls on stairs, lighting, personal hygiene and crowding and space.
15. Also on 31 January 2019, the Respondent made a suspended prohibition order in respect of the first-floor front right room. This was because, having considered the HHSRS Enforcement Guidance and the Respondent's HMO Standards Document regarding fire safety, natural light and ventilation, it concluded that no practicable works could be undertaken to reduce the hazard of crowding and space. The order was for it to cease being occupied as sleeping room by 12 September 2019 as it did not meet the minimum space standard for an adult to occupy. This order was not appealed by the Applicant and is still operative. The Respondent suspects based on the information it has that the room is still occupied, but it has decided to focus on the hazards that put occupiers at serious fire safety risk before taking legal proceedings for any breach of that prohibition order.

16. On 11 February 2019 the Applicant emailed Ms Williams stating that he considered the works listed in the schedule attached to the improvement notice related to HMO licencing which he was disputing. The time given for works to be completed to comply with the notice was 42 days from the operative date. The Applicant said if the works did need to be carried out then he needed more time as they were quite extensive, although he did not appeal the improvement notice.
17. Ms Williams emailed the Applicant on numerous occasions to discuss the progress of the works and also requested access for a compliance inspection. The Applicant gave no update on the progress of the works and was not available on any of the dates that she proposed for access and provided no alternative dates when he would be available. Without access to check if the notices had been complied with, she was unable to take further enforcement action for non-compliance with the improvement notice or the suspended prohibition order, and she considered applying for a warrant.
18. On 7 January 2022 Nick Long (Respondent Enforcement Officer) contacted Ms Williams as he had received a referral reporting that the Property was overcrowded. Mr Long said one of the tenants had told him that Platinum Estates were currently managing the Property and he told her that he had arranged access for an inspection with them. That inspection took place on 2 February 2022, and representatives from Platinum Estates were present. Ms Williams took photos of the deficiencies she saw during the inspection. The agents said they were not sure which rooms they were managing so they were asked to clarify the position and provide copies of the tenancy agreements. No tenancy agreements have been provided to date.
19. At the front of the Property there was external disrepair to the ground floor front left window and sill. The double-glazed window seal had blown, allowing moisture between the panes which reduced the thermal integrity of the window. In the ground floor hallway, there were damp stains to the wall and ceiling, probably (in Ms Williams' view) caused by a leak from above close to the light fitting. There was a washing machine, a bike and other items obstructing the means of escape route from the rear of the building. The understairs and cupboard had no fire separation where the fuse box and electric meter were located, and combustible items were being stored there. There was what appeared to be a battery-operated smoke alarm. There was no thumb turn lock to the rear exit door. The improvement notice works schedule required a wired interlinked fire detection system to be installed in the hallway, first floor landing and each room or self-contained unit with a heat detector where cooking facilities were provided. Ms Williams states that she and Mr Long were not provided with access to the ground floor

front left room, that it was locked and the agents said they did not have keys, and that she and Mr Long understood it to be occupied.

20. The ground floor rear right self-contained flat, which is accessed via a rear door and through the rear garden, was occupied. There was external disrepair to the roof. There was a portable heater, which is a fire hazard and which indicated the heating system was not providing sufficient warmth. There was a battery-operated smoke alarm in the entrance lobby and a wired smoke alarm in the sleeping area which indicated that the fire detection provided was not interlinked throughout the Property. The means of escape from the sleeping area was via the kitchen in the middle of the dwelling. The improvement notice required a safe means of escape from the sleeping area to be provided that was away from the kitchen area to prevent the occupant being trapped if a fire occurred. There was no heat detector in the kitchen and no fire blanket. There were damp stains to the skirting board in the bedroom, and there were combustible furniture items being stored in the garden area next to the exit to the dwelling.
21. The ground floor rear left flat was accessed via the rear exit door and rear garden and was occupied. The sleeping area was at the rear end with no window to provide natural light or ventilation. The kitchen was located next to the exit, providing no safe means of escape from the sleeping area should a fire occur in the kitchen. The improvement notice works schedule required a safe means of escape from the sleeping area away from the kitchen to be provided. There was no smoke alarm or heat detector. There was no fire blanket in the kitchen. There was a damp stain to the wall in the sleeping area next to electric extension leads. There were combustible furniture items being stored in the garden area next to the exit to the dwelling.
22. Ms Williams and Mr Long did not obtain access to the outbuilding located in the rear garden. Entry into the outbuilding was via the rear exit door of the main dwelling and through a locked gate in the rear garden. The improvement notice works schedule required a safe means of escape to be provided from the rear outbuilding. There was disrepair to the roof which appeared to have inadequate insulation. There were combustible items being stored by the exit door.
23. In the ground floor hallway, Ms Williams saw a door and a partition wall fitted at the bottom of the stairs to separate the ground floor and first floor which had been installed since her inspection in 2018. A handrail has been fitted to the stairs but was not fixed securely and came apart. There was a hole punched through the plasterboard partition wall. There were obstructions on the landing compromising the means of escape.

24. Ms Williams and Mr Long inspected the shared kitchen to the rear right of the first-floor landing. The shared kitchen did not meet the required measurements for an HMO. A cable from the washing machine was trailing across the worktop as there was no dedicated socket below the worktop. The separate toilet on the first floor had no wash hand basin and so there was a risk of infection spreading between occupants. The improvement notice works schedule required a wash hand basin to be provided.
25. The first-floor front left room was occupied but had no fire door, smoke seal, intumescent strip, self-closer or thumb turn lock. There was a portable heater plugged into an extension lead, which is a fire hazard and indicated that the central heating was not providing sufficient warmth. The extension cable was trailing across the worktop due to lack of power sockets provided. There was condensation and mould in the shower room as the extractor fan was not working. The double-glazed window seal had blown, allowing moisture between the panes which reduced the thermal integrity of the window.
26. The first- floor rear room was occupied. The light fitting was loose, there was no fire door, smoke seal, intumescent strip, self-closer or thumb turn lock. The sealant around the shower and wash hand basin was damaged, the basin tap was loose and there were signs of a leak. The sealant around the shower was damaged and the tiles and shower base were badly corroded with limescale.
27. Ms Williams and Mr Long did not gain access to the first-floor front right room on which the suspended prohibition order had been made, but they understood from a tenant that the room was currently occupied.
28. They were unable to confirm there was a working interlinked fire detection system throughout the means of escape, the shared facilities, the individual rooms, and the self-contained dwellings, which posed a significant fire safety risk to the occupants. They advised the managing agent to fit battery operated alarms urgently as a temporary measure.
29. On 28 February 2022 Ms Williams and Mr Long discussed their findings and proposed actions with Ms Williams' line manager, Natalie Males. It was agreed that the fire safety officer, John Yates, and Ms Males would attend an inspection of the Property prior to the Respondent taking further action. The fire safety officer's role is described by the Respondent as being to provide guidance to officers on fire safety measures within dwellings as outlined in the 'Fire Safety Guidance for Houses in Multiple Occupation'.

30. On 9 May 2022 Ms Williams inspected the Property with Ms Males, Mr Long and Mr Yates. She took photos of the deficiencies identified during the inspection. Access into the Property was provided by the tenants. The fire safety hazards in the ground hallway were still present, including no interlinked smoke alarm, no fire separation to the under the stairs, and combustible items being stored there. There were obstructions to the means of escape, a washing machine in use within the means of escape route, no thumb turn locks to the exit door, and no fire separation to the fuse box and electric meter. There was still damp to the walls and ceiling. The apparent lack of safe means of escape from the ground floor rear left, ground floor rear right and rear outbuilding was discussed the fire officer, Mr Yates. It was noted that there was also no emergency lighting provided in the rear garden to illuminate the means of escape route.
31. They also inspected the ground floor rear right flat, and Ms Williams discussed with Mr Yates her concern that there was no safe means of escape from the dwelling and that the only means of escape from the sleeping area within the dwelling itself was via the kitchen. There was damp to the external wall, no guttering or downpipe to disperse rainwater, and inadequate insulation to the roof. There were flammable items being stored in the garden.
32. They also inspected the ground floor rear left flat. There was no guttering or downpipe to disperse rainwater from the roof. Flammable items were being stored in the garden. The same conversation as above took place regarding the concern that there was no safe means of escape. There was also no window or means of ventilation within the sleeping area, and the occupant told them that it was very stuffy and airless, particularly during hot weather, which caused her disrupted sleep.
33. They also inspected the rear outbuilding and noted that there was insufficient insulation to the roof. There were flammable items stored in the garden and front entrance to the dwelling. The exit door to the dwelling had no thumb turn lock. Ms Williams discussed with Mr Yates her concern that there was no safe means of escape from the dwelling and that the means of escape from the sleeping area within the dwelling was via the open plan kitchen/lounge area. The smoke alarm was found only to work when the light was switched on. The tenant told Ms Williams that in the winter the building did not retain any warmth once the heating had been switched off, which she believed because the building had been constructed with inadequate insulation.
34. They could not obtain access to the ground floor front left room. They then inspected the first floor of the main dwelling. The fire door at the bottom of the stairs had no smoke seal, intumescent strip or self-closer

and was not hung on three hinges. There were holes punched in the partition wall next to the stairs. On the first floor landing the emergency light was flickering. When the smoke alarm was tested, it was not interlinked to the alarms throughout the building. There were obstructions to the means of escape route. The fire doors to the shared kitchen, first floor front bedroom and first floor rear bedroom had no smoke seal, intumescent strip or self-closer and were not hung on three hinges. There were wired smoke alarms in the bedrooms, but they were not interlinked throughout. Ms Williams saw gaps between the door and frame to the first-floor front right room but did not gain access inside the room. She and Mr Long were told that the room was occupied despite there being a suspended prohibition order in place.

35. On 23 May 2022 Ms Williams received a copy of the fire officer's report with his findings and recommendations following the inspection. On 25 May 2022 she completed an online HHSRS assessment of the hazards identified at the inspection. She referred to the HHSRS Operating Guidance when assessing category 1 hazards for fire safety, excess heat and excess cold and one category 2 hazard for damp and mould.
36. On 9 June 2022 Ms Williams had a further meeting with Ms Males and Mr Long to consider what further action was appropriate. They considered the fire safety officer's report, the HHSRS assessment ratings, the fact that the works had not been completed to comply with the improvement notice and that additional category 1 hazards had been identified. They discussed the time that had elapsed since the improvement notice was served and the fact that the Applicant had been made aware of the significant hazards. In addition, Mr Long had already sent an email to the Applicant on 20 April 2022 advising him that the Respondent was considering serving prohibition orders. They then realised that there was a clerical error on the improvement notice, as the date for the works to commence on the works schedule was incorrect. For that reason, they agreed to revoke the improvement notice.
37. Although other category 1 hazards and category 2 hazards were identified, the Respondent decided to focus first on the particular hazards identified in the rear left and rear right units and the rear outbuilding, with the aim of taking enforcement action for the remaining parts of the building later. They considered what was the most appropriate action at that stage based on the Enforcement Guidance and decided that prohibition orders should be made on the ground floor rear right unit, the ground floor rear right unit and the rear outbuilding to reduce the immediate risk to the occupiers.

38. On 23 June 2022 Ms Williams sent the Applicant a copy of the revocation of the improvement notice, and then on 29 June 2022 prohibition orders were made on the ground floor rear left unit, ground floor rear right unit and rear outbuilding. The prohibition orders were to prohibit the use of the dwellings for sleeping and residential occupation, and they required the dwellings to be vacant within a period of 28 days. Ms Williams noted that to assist with this process a landlord can apply to the magistrates' court to make a determination under section 35 of the 2004 Act once the prohibition order becomes operative.
39. Copies of the prohibition orders were sent via first class post on 29 June 2022 to the Applicant's known address of 32 Gibley House, 38 Jamestown Road, London, NW1 7BY. Certificates of service were signed by the Respondent's post room. The Respondent states that under Appendix 11 of the 2004 Act a copy of any prohibition order must be affixed to some conspicuous part of the specified premises within the period of 7 days from the date the order is made, and this was done on 4 July 2022 within the required 7 days. A copy was also sent to the Applicant's mortgage lender as an interested party. Also on 4 July 2022, Ms Williams affixed a prohibition order to the door of the ground floor rear right dwelling, the ground floor rear left dwelling and to the locked gate leading to the rear outbuilding. In the Respondent's view, copies were not required to be provided for other occupiers living within the Property not affected by the orders. Ms Williams also sent copies of the prohibition orders to the Applicant by email on 4 July 2022 in case he was not currently in the country and might not have arrangements to receive post from his residential address.
40. On 11 July 2022 Ms Williams received an email from the Applicant saying he had consulted with his builder but wanted to wait to speak to his adviser before proceeding with any works. On 19 July 2022 she then received a further email from the Applicant saying he would proceed with the works to provide a safe means of escape once he had received planning consent to install exit doors. He said he would make a planning application in one month's time. He advised that the roof repairs would be carried out in August and September if the weather, materials and labour permitted. He said that his builder disputed that there was coldness due to lack of insulation and his tenant had confirmed this. The Applicant suggested that the Respondent provide written confirmation that it was agreeable to his proposals and that it would not take court action once the notices expired, otherwise he would appeal the orders.
41. On 21 July 2022 Ms Williams sent a response email to the Applicant advising him that the Respondent was reviewing his comments and

that she would discuss the position with her head of service on her return from leave. She also asked him to provide the current status of his planning applications and to provide a building regulation certificate as confirmation that building regulations had been met with regard to roof insulation. On 22 July 2022 she received a further email from the Applicant saying that if she had to discuss the matter with her head of service then it was clear she held no delegated authority to sign the prohibition orders. In addition, he argued that the prohibition orders had been incorrectly served as copies had not been given to all occupiers. He advised again that Ms Williams should agree to his suggestion, otherwise he would appeal the orders. There was then some further correspondence and then the Respondent was notified that the Applicant had indeed appealed the orders.

42. In August 2022 Ms Williams received a request from Mr Nicastro, the Applicant's adviser, asking where the doors should be installed. She responded by referring Mr Nicastro to the schedule of works attached to the relevant prohibition order which required a fire risk assessment and the submission of plans to provide an adequate, appropriate, and safe means of escape in case of fire from the outbuilding. She advised that once this had been provided the Respondent could review the proposals accordingly. Mr Nicastro later chased again for an answer, but Ms Williams wrote back referring him to the schedule of works attached to the prohibition order requiring that the Applicant undertake a fire risk assessment. In addition, she advised that the works might be subject to planning permission and would need to meet current building regulations. There was then further correspondence from both Mr Nicastro and the Applicant asking where the doors should go.
43. On 15 September 2022 Ms Williams emailed the Applicant referring to Mr Long's email of 22 April 2022 in which he suggested that a fire escape window could be installed in the front of the garage unit. She provided specifications for a window to comply with fire safety regulations and advised that any alterations to the building structure might require building control and planning approval consents. She explained that the assessment under the Housing Health and Safety Rating System (HHSRS) following the inspection on 9 May 2022 identified category 1 fire hazards and that the Respondent had a statutory duty to take appropriate enforcement action in relation to the hazards. Due to the seriousness of the hazards a decision was made to serve the prohibition order on the garage unit. She again asked him for a copy of his fire risk assessment.
44. The Respondent's hearing bundle contains a large amount of supporting documentation and correspondence, too numerous to list individually.

Oral submissions at hearing

45. At the hearing the Applicant said that he had carried out all of the works requested by Mr Long in March/April 2022. In his submission, the main outstanding issue was the fire exit doors, and the problem was that planning permission was required before they could be installed. Planning permission came through in February 2022 but there was an implementation issue as the relevant external wall belongs to the public highway and he could not drill into it without their permission.
46. Regarding the issue of linking up the fire alarm system, the Applicant's fire adviser had said that it was unnecessary to link it to the outbuilding as it was a separate building. The Applicant also said that the relevant units and the outbuilding were safe to be used as they have fire and heat alarms, and no separate fire exit is needed.
47. The Applicant did not accept that there was excess cold in the ground floor right self-contained unit and said that the occupier had never complained. If the occupier later complained to the Respondent it was because he wanted to be re-housed. Regarding the finding of damp and mould growth, he said that this was because the bathroom fan was not working. The Applicant also reiterated certain points made in written submissions.
48. Ms Williams for the Respondent summarised various points made in her witness statement. She said that when she inspected in February 2022 the condition of the Property had deteriorated since her previous inspection, and then when she inspected again in May 2022 nothing had changed. The Property was not safe.
49. Regarding the service of the prohibition orders on the Applicant at his postal address, there was no reason to indicate that he would not be at that address, and the Respondent carried out a 'NAFN' search just to make sure that it was the correct address and that there were no other addresses. As for the fact that copies of the prohibition orders were not served on all occupiers, they only needed to be served on occupiers of units to which they related.
50. On the question of when the Applicant knew that the Respondent was considering serving prohibition orders on him, there was an email dated 20 April 2022 in the hearing bundle from Mr Long to the Applicant warning him of this possibility.
51. Ms Williams said that she had asked the Applicant and/or his adviser many times for a fire risk assessment but this had not been provided, and nor were any building regulations certificates provided to show

that there was proper insulation. She also noted that occupiers were using portable heaters. She disagreed with the Applicant's assessment in relation to the outbuilding and said that it was not currently separate and self-contained for fire purposes.

Cross-examination of Ms Williams

52. The Applicant asked why he had not been notified that she would be inspecting in February 2022 and she replied that he had been notified. He also asked her in what ways the Property had deteriorated since the previous inspection, and she replied that nothing had been done to fix the problems previously identified, that the smoke alarm in the outbuilding was worse, the damp and ventilation issues were worse and there was furniture stored in such a way that it constituted a fire hazard.
53. When asked why there had been no communication regarding fire safety between February and April 2022 Ms Williams said that there had been communication with the Applicant's adviser, Mr Nicastro. Also, the improvement notices had highlighted the fire safety issues.

Cross-examination of Mr Long

54. The Applicant was also permitted to cross-examine Mr Long, even though he had not given a witness statement. The Applicant put it to him that Mr Long's email of 22 April 2022 proposed a solution that would have obviated the need for serving prohibition orders, but Mr Long disagreed with this reading of his email.

Relevant statutory provisions

55. *Housing Act 2004*

Section 5

- (1) *If a local housing authority considers that a category 1 hazard exists on any residential premises, they must take the appropriate enforcement action in relation to the hazard.*
- (2) *In subsection (1) "the appropriate enforcement action" means whichever of the following courses of action is indicated by subsection (3) or (4) –*
- (a) serving an improvement notice under section 11;*

(b) making a prohibition order under section 20 ...

- (3) If only one course of action within subsection (2) is available to the authority in relation to the hazard, they must take that course of action.*
- (4) If two or more courses of action within subsection (2) are available to the authority in relation to the hazard, they must take the course of action which they consider to be the most appropriate of those available to them.*

Section 7

- (1) The provisions mentioned in subsection (2) confer power on a local housing authority to take particular types of enforcement action in cases where they consider that a category 2 hazard exists on residential premises.*
- (2) The provisions are –*
 - (a) section 12 (power to serve an improvement notice),*
 - (b) section 21 (power to make a prohibition order) ...*

Section 20

- (1) If – (a) the local authority are satisfied that a category 1 hazard exists on any residential premises, and (b) no management order is in force in relation to the premises under Chapter 1 or 2 of Part 4, making a prohibition order under this section in respect of the hazard is a course of action available to the authority in relation to the hazard for the purposes of section 5 ...*
- (2) A prohibition order under this section is an order imposing such prohibition or prohibitions on the use of any premises as is or are specified in the order in accordance with subsections (3) and (4) and section 22.*
- (3) The order may prohibit use of the following premises – (a) if the residential premises on which the hazard exists are a dwelling or HMO which is not a flat, it may prohibit use of the dwelling or HMO; (b) if those premises are one or more flats, it may prohibit use of the building containing the flat or flats (or*

any part of the building) or any external common parts; (c) if those premises are the common parts of a building containing one or more flats, it may prohibit use of the building (or any part of the building) or any external common parts.

- (4) *The notice may not, by virtue of subsection (3)(b) or (c), prohibit use of any part of the building or its external common parts that is not included in any residential premises on which the hazard exists, unless the authority are satisfied – (a) that the deficiency from which the hazard arises is situated there, and (b) that it is necessary for such use to be prohibited in order to protect the health or safety of any actual or potential occupiers of one or more of the flats.*

Section 21

- (1) *If – (a) the local housing authority are satisfied that a category 2 hazard exists on any residential premises, and (b) no management order is in force in relation to the premises under Chapter 1 or 2 of Part 4, the authority may make a prohibition order under this section in respect of the hazard.*
- (2) *A prohibition order under this section is an order imposing such prohibition or prohibitions on the use of any premises as is or are specified in the order in accordance with subsections (3) and (4) of section 22.*
- (3) *Subsections (3) and (4) of section 20 apply to a prohibition order under this section as they apply to one under that section.*

Section 22

- (1) *A prohibition order under section 20 or 21 must comply with the following provisions of this section.*
- (2) *The order must specify, in relation to the hazard (or each of the hazards) to which it relates – (a) whether the order is made under section 20 or 21, (b) the nature of the hazard concerned and the residential premises on which it exists, (c) the deficiency giving rise to the hazard, (d) the premises in relation to which prohibitions are imposed by the order ... and (e) any remedial action which the authority consider would, if taken in relation to the hazard, result in their revoking the order under section 25.*

- (3) *The order may impose such prohibition or prohibitions on the use of any premises as – (a) comply with section 20(3) and (4), and (b) the local housing authority consider appropriate in view of the hazard or hazards in respect of which the order is made.*
- (4) *Any such prohibition may prohibit use of any specified premises, or any part of those premises, either – (a) for all purposes, or (b) for any particular purpose, except (in either case) to the extent to which any use of the premises or part is approved by the authority.*

Section 23

- (1) *A prohibition order may provide for the operation of the order to be suspended until a time, or the occurrence of an event, specified in the order.*
- (2) *The time so specified may, in particular, be the time when a person of a particular description begins, or ceases, to occupy any premises.*

Schedule 2

- 7(1) *A relevant person may appeal to the appropriate tribunal against a prohibition order.*
- (2) *Paragraph 8 sets out a specific ground on which an appeal may be made under this paragraph, but it does not affect the generality of sub-paragraph (1).*
- 8(1) *An appeal may be made by a person under paragraph 7 on the ground that one of the courses of action mentioned in sub-paragraph (2) is the best course of action in relation to the hazard in respect of which the order was made.*
- (2) *The courses of action are – (a) serving an improvement notice ... (b) serving a hazard awareness notice ... (c) making a demolition order ...”.*
- 11(1) *This paragraph applies to an appeal to the appropriate tribunal under paragraph 7.*

- (2) *The appeal – (a) is to be by way of a re-hearing, but (b) may be determined having regard to matters of which the authority were unaware.*
 - (3) *The tribunal may by order confirm, quash or vary the prohibition order.*
 - (4) *Paragraph 12 makes special provision in connection with the ground of appeal set out in paragraph 8.*
- 12(1) *This paragraph applies where the grounds of appeal consist of or include that set out in paragraph 8.*
- (2) *When deciding whether one of the courses of action mentioned in paragraph 8(2) is the best course of action in relation to a particular hazard, the tribunal must have regard to any guidance given to the local housing authority under section 9.*

Tribunal's analysis

- 56. The Applicant has challenged the prohibition orders on a number of grounds, which we will deal with in turn.
- 57. He states that not all occupiers received copies of the prohibition orders. However, we are satisfied based on the evidence before us that the occupiers who were actually affected by a specific order did receive a copy of that prohibition order. As there is no obligation on a local housing authority to serve on an occupier of premises a copy of a prohibition order relating to different premises this objection falls away.
- 58. The Applicant submits that there was no valid scheme in place to authorise the issuing of the prohibition orders by Ms Williams or by anyone else other than the Director. We do not accept this and are completely satisfied by Ms Williams' written explanation as to the basis of her authority.
- 59. The Applicant states that service was not effected on him until 4 July 2022 and therefore that he was not given the necessary 28 days' notice, but this is not the case. The prohibition orders were sent to him by first class post on 29 June 2022. They were sent to his known address, which was checked using a 'NAFN' search, and the evidence before us is that certificates of service were signed by the Respondent's post room. Whilst copies were not sent by email until 4 July 2022, this fact does not invalidate the earlier service in any way. Although it is arguable

that ideally the Respondent should have sent the email at the same time as the letter, it was under no obligation to do so. Therefore, the Applicant was given sufficient notice even if in practice he did not see copies of the prohibition orders until 4 July 2022.

60. The Applicant's other objections all relate to the parties' competing narratives as to what actually happened since the Respondent's first inspection and the degree of seriousness of the issues identified by the Respondent. The Applicant's narrative is that he sought to address the relevant issues by applying for planning permission for certain works, that whilst awaiting the grant of planning permission he was in contact with Mr Long, that he sought guidance from the Respondent as to the location of the fire doors and made a number of requests to the Respondent but did not receive substantive replies, and that the Respondent served the prohibition orders on 29 June 2022 without any form or dialogue or prior notice.
61. However, having considered the parties' respective submissions we find the Respondent's submissions very much more compelling than those of the Applicant. There is much evidence that the Respondent gave the Applicant ample opportunity to address the relevant hazards and that he failed to do so in a reasonable manner. The Respondent identified concerns as early as May 2018, but it took the Applicant 6 months even to make himself available for a joint inspection. This was followed by a pattern of the Applicant combining appeals against notices with requests for more time for compliance, but then over a lengthy period of time the Applicant gave no update on the progress of the works and was not available on any of the dates that Ms Williams proposed for access and provided no alternative dates when he would be available.
62. The evidence before us indicates that the Respondent did a thorough and professional job in inspecting and re-inspecting the Property, compiling and analysing information as to the existence of various hazards on the Property as detailed in the prohibition orders, engaging in internal consultation between different professionals with different skill-sets, and affording the Applicant and his adviser a reasonable opportunity to dispute the Respondent's findings and/or to engage with the Respondent. After the prohibition orders were served on the Applicant there was some engagement by him with the Respondent, but in our view this engagement was mostly not constructive. Whilst there were repeated attempts to put pressure on the Respondent to reverse the prohibition orders, the evidence indicates that the Applicant repeatedly failed to submit a fire risk assessment and/or plans showing an appropriate means of escape in case of fire from the outbuilding. The tribunal's overall impression was of a landlord whose main focus was on how to keep his responsibilities to an absolute minimum and who was insufficiently concerned about the risks to his

own occupiers arising out of the category 1 hazards which had been documented by the Respondent in compliance with its statutory duties.

63. The tribunal asked Ms Williams questions about the Respondent's hazard scoring system at the hearing, albeit that this was not one of the bases of the Applicant's appeal. Ms Williams and her colleagues were possibly not expecting these questions, and initially they found it difficult to explain the scoring system. However, after some discussion they were able to explain their methodology. On the basis of that discussion and the documentation in the hearing bundle, we are satisfied that the Respondent went through a proper and logical process in scoring each hazard and that there is no sound basis for disagreeing with the Respondent's conclusions. We therefore accept that the hazards were as set out in the prohibition orders and therefore that it was open to the Respondent to serve those prohibition orders on the Applicant.
64. As to whether a different type of enforcement action would be more appropriate, we do not consider that it would be. Improvement notices would be impractical at this stage, first because it is not in our view currently safe to occupy these units, secondly because the evidence before us indicates that the units need to be vacant to enable the works to be carried out and thirdly because it should be possible to carry out the necessary works and make the units fit again for occupation within a reasonable time. Hazard awareness notices would not by themselves remedy the hazard and the Applicant has shown an unwillingness to deal with the hazards effectively unless forced to do so.
65. There is no evidence or suggestion that there is any management order in force in relation to the Property, and we are satisfied that the Respondent has complied with the relevant provisions of section 22 of the 2004 Act.
66. In conclusion, therefore, we consider that the service of the prohibition orders was and remains (a) a course of action available to the Respondent and (b) the most appropriate course of action in the circumstances to deal with the hazards that exist at the Property.

Cost applications

67. There were no cost applications.

Name: Judge P Korn

Date: 21 March 2023

RIGHTS OF APPEAL

- A. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) a written application for permission must be made to the First-tier Tribunal at the regional office dealing with the case.
- B. 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.
- C. If the application is not made within the 28 day time limit, such application must include a request for extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
- D. 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.