



EMPLOYMENT TRIBUNALS

Appellants

Respondent

Mr Shabir Ahmed

v

Tania Bernice Shiffer

Miss Bethany Ahmed

**(One of His Majesty's Inspectors of
Health and Safety)**

Heard: In Leeds On:

7 to 9 August 2023

Before:

Employment Judge JM Wade

Mr W Roberts

Mr M Taj

Representation:

Appellants: Mr Ahmed, in person and for Miss Ahmed

Respondent: Mr L Hughes, counsel

Note: A summary of these reasons was provided orally in an extempore Judgment delivered on 9 August 2023, which was sent to the parties on 14 August 2023. A request for the written reasons was received from the claimant on 15 August 2023. The reasons below, corrected for error and elegance of expression, are now provided in accordance with Rule 62 and in particular Rule 62(5) which provides: In the case of a judgment the reasons shall: identify the issues which the Tribunal has determined, state the findings of fact made in relation to those issues, concisely identify the relevant law, and state how the law has been applied to those findings in order to decide the issues. For convenience the Judgment given on 9 August 2023 is also repeated below:

JUDGMENT

1 The notices N-TBS-300123-01 and N-TBS-300123-01A served by the respondent on the appellants on 30 January 2023 are affirmed subject to the following modifications:

In 300123-01A "Mrs" is replaced by "Miss"; and in both notices:

After “and the matters which give rise to the said risks are:” substitute:

“The chimney at the front of the property is supported by a piece of timber under the chimney’s mid feathers;

The rear chimney has about 1.5m of chimney remaining on the second floor and again not supported on the underside; and

The rear chimney is not supported between first and second floors;

And there is a risk of local collapse of the chimney structures/masonry and injury from falling masonry, rendering the property structurally unstable or weakened and unsafe.”

- 2 The appellants shall by **30 August 2023** provide to the respondents any documents on which they rely in connection with their opposition to the oral application for costs made on behalf of the respondent today.
- 3 The respondent shall by **no later than 13 September 2023** provide to the Tribunal and the appellants either a) an application for costs in writing together with any consequent schedule of costs and confirmation of which type of decision, papers or attended hearing, she seeks; or b) confirmation that a costs application is not pursued.
- 4 If the costs application is pursued, the appellants may then submit to the Tribunal and the respondent any further grounds of opposition by **27 September 2023 and confirmation of whether they wish the application to be decided by the Employment Judge without a hearing or by the full panel at a hearing at which they attend (or be represented).**
- 5 A decision/hearing date shall then be fixed as soon as practicable before the full Tribunal or the Judge alone as appropriate with a time estimate of three hours/two hours respectively.

REASONS

Introduction and background (including agreed and other facts)

1. A prohibition notice can be served by an inspector appointed by an instrument in writing pursuant to section 19 of the Health and Safety at Work Act 1974. Tania Shiffer is an inspector of health and safety duly appointed in accordance with section 19 of The Health and Safety at Work etc Act 1974.
2. As such she has a number of powers conferred upon her. Local authority building control officers also have distinct powers available to their authorised officers pursuant to the Building Act 1984.
3. Appeals against Prohibition Notices come to the Employment Tribunals.
4. Miss Bethany Ahmed is the lawful owner of 51 Haworth Road, Cross Roads, Keighley, BD21 2DH (the premises) since December 2021/January 2022. Mr Shabir Ahmed has undertaken construction works at the premises since it was transferred to Miss Ahmed. The notice was issued to Mrs Ahmed, which was an error in that it was assumed Bethany Ahmed, the registered proprietor at the land registry, was Mr Ahmed’s wife – she is in fact his daughter currently residing in Manchester.

5. Mr Ahmed has on occasions been assisted by another person in those works, said by Mr Ahmed to be his brother.
6. An initial enforcement inspection took place at the premises by Paul Inman of building control on 27 September 2022.
7. Mr Inman did not on that occasion observe the condition of chimney breasts and was primarily concerned on that occasion with the safety issues at the front of the property in connection with the passage of the public.
8. There were then various failed attempts to gain access to the premises with Mr Ahmed's consent. Mr Ahmed was and is the principal key holder. A warrant was obtained at the Magistrate's Court and enforced on 26 January 2023 pursuant to their powers under section 95 of The Building Act 1984.
9. Prohibition notices were served on the appellants by the respondent on 30 January 2023 pursuant to the inspector's power under section 22 of The Health and Safety at Work Act 1974.
10. Attempts to meet Mr Ahmed at the property between late September and January were conducted in an entirely courteous way by Mr Inman and his manager, albeit their attempts to meet with Mr Ahmed at the property did not meet with success.
11. The communications from building control became more firm including suggesting that a representative could be sent on Mr Ahmed's behalf. We find that his brother or another family member or Miss Ahmed could have attended at the property with the keys on an earlier occasion in order to meet with Mr Inman.
12. Miss Shiffer had not attended at the premises at the time of serving the prohibition notices.
13. She had discussed the matter with Mr Inman and Mr Perkins at building control.
14. Further to serving the prohibition notices the respondent saw further photographs which had been taken at the premises by building control on the 26th. She saw these on 31 January 2023.
15. The premises was boarded by building control pursuant to their powers under Section 78 of The Building Act 1984.

The Law

16. A statement of the law that applies to this appeal was included in the agreed statement of facts for today.
17. Section 24 of the 1974 Health and Safety at Work Act 1974 says:

Appeal against improvement or prohibition notice.

(1) In this section "a notice" means an improvement notice or a prohibition notice.

(2) A person on whom a notice is served may within such period from the date of its service may be prescribed appeal to an employment

tribunal; and on such an appeal the tribunal may either cancel or affirm the notice and, if it affirms it, may do so either in its original form or with such modifications as the tribunal may in the circumstances think fit.

(3) Where an appeal under this section is brought against a notice within the period allowed under the preceding subsection, then —.....

(b) in the case of a prohibition notice, the bringing of the appeal shall have the like effect if, but only if, on the application of the appellant the tribunal so directs (and then only from the giving of the direction).

18. The “like effect” is the suspension of the relevant notice or prohibition notice.
19. At subsection 4 one or more assessors may be appointed for the purposes of any proceedings brought before an Employment Tribunal under this section. In this case the Tribunal did float with the parties the prospect of a site visit, because the issues in connection with this appeal are not matters which frequently come before the Tribunal. In some circumstances we might be helped by either a site visit or some form of expert evidence. Fortunately we have had heard evidence from Miss Spicer, a structural engineer.

Further background findings about the works at the premises

20. We will describe in words our findings from, essentially, plans and photographs as well as oral evidence. The property in question (the premises), as defined, had, historically, two chimneys each comprising chimney breasts over three floors and chimney stacks above the roof line. The rear chimney breast and the stack formed, in effect, one side of an arch type structure, with the other side running inside the rear of the neighbouring property, a butcher’s premises. The front chimney was also shared with the neighbouring property.
21. Both front and rear chimney breasts in both properties were removed historically at ground floor level, as were the rear chimney stack and front chimney stack, that is before Mr Ahmed’s involvement the chimney stacks were removed, or reduced to a very low level above the roof in the case of the front chimney stack. In lay terms, the bottom and top of the chimney structures had been removed, but the first and second floor structures had been left, with the obvious lack of support from ground up.
22. During the renovation works which Mr Ahmed was undertaking at the premises, he removed the internal ground floor wall essentially creating one room out of the front and back rooms of the shop. He installed a support - a steel RSJ.
23. These works were taking place in the premises at the material times.

The evidence and other matters

24. We had a bundle of 300 pages or so. A good deal of that was providing us with the relevant law, but we have had access to many images taken in the property both by Mr Ahmed and indeed by Mr Inman. We heard oral evidence on behalf of the inspector from Mr Inman, building control surveyor, from Miss Shiffer, the inspector herself, and also from Miss Spicer, who is a structural engineer.

25. We simply say that we are satisfied that these witnesses are witnesses of truth and they gave sensible, frank evidence and we had no reason to doubt anything that was said to us.
26. We have also heard evidence from Mr Ahmed, the appellant, on his own behalf. We have not heard oral evidence from Miss Ahmed because she did not attend. At the start of the case we took steps (by a call from our clerk to Miss Ahmed) to be satisfied that she had appointed Mr Ahmed to act as her representative in the case. A lay representative is permitted, and indeed common, in this Tribunal.
27. Nevertheless we have heard no oral evidence from her about, for example, the purpose for which the property was purchased, or any other matters on which she could help us. We were simply told by Mr Ahmed answering a question from Mr Hughes that this a joint investment property, perhaps not such an unusual occurrence in families.
28. We also heard oral evidence from Mr Ahmed, some of which was corroborated by email. Otherwise we simply say this: we would be reluctant to make a finding of fact based only on the oral evidence of Mr Ahmed and we would look in all circumstances for some form of corroboration. That is the assessment we reached having heard the inspector's case put to him in cross examination. He was a reluctant witness from whom it proved difficult to have answers to straightforward questions.

The grounds of appeal

29. As far as the grounds of appeal are concerned these were set out by Mr Ahmed acting as a litigant in person. We have borne in mind that the inspector has been fully and throughout represented by both solicitors and experienced counsel. In contrast Mr Ahmed, also acting for Miss Ahmed, is a litigant in person acting for another litigant in person. We have to put the parties on an equal footing as best we can. He was quite rightly entitled to a good deal of latitude in the way these proceedings have been conducted to enable him to participate fully and ask the questions that he wished to ask. We have afforded him that opportunity.
30. Coming to the grounds of appeal we are acutely aware that our appellate jurisdiction is very limited. We can cancel or affirm the notice, or affirm with modifications.
31. We would be very reluctant to express any view about the alleged contraventions that also form part of the notice because that is a matter that may come before a different jurisdiction - it is certainly not a matter for us. We are not, for example, in a position to make any finding about whether Mr Ahmed is a competent person within the meaning of the notice. That is not territory into which we are going to stray.
32. As far as the grounds of appeal are concerned, Mr Ahmed says this. "It is alleged that the chimney and its supporting structures have been removed without suitable replacement of any form of additional support mechanisms rendering the property structurally unstable or weakened and unsafe".
33. His position on that is that the allegation is without foundation and he goes on to describe how historically parts of the chimney structure or structures have been removed. We have made findings that we agree with him in that respect

- (and it has been accepted by Miss Spicer) - Mr Ahmed is right about the historic removal of parts of the structures.
34. He makes that point because he feels it has been suggested that he personally has removed a chimney breast on the ground floor – he has not. It is clear that these works have taken place before his acquiring of the property, or coming to do work in the property, more correctly put.
 35. We make no comment on his competence for the reasons that I have explained. As to whether there is risk in the property as a result of historic removal and then further works taking place, we are broadly speaking satisfied that there is risk of falling masonry and risk of injury. In that respect we do not accept his view that there is no risk in that property currently, as he puts, it in those simple terms.
 36. The other aspect of his grounds of appeal is that he finds it ridiculous that a structural report is being requested when it is not necessary. That is, in essence what is required to be done by the notice, and in that respect, again, we are against him. We do not find that it is “not necessary” to have the opinion of a structural engineer in relation to these circumstances – in short the sufficiency of support where chimneys have been removed in the past.
 37. As to the allegation that there is inconsistency in treatment between Mr Ahmed and his neighbour, this is a Tribunal that frequently addresses allegations of unequal treatment, discrimination and victimisation. Such an assessment requires us to consider the circumstances of each person.
 38. There are two (we might call them “twin”) adjoining properties. In the right hand twin there are no works being carried out. In the left hand twin property Mr Ahmed has been carrying out works including the removal of a wall and its support by steel and other works. If we were to be considering whether there had been unequal treatment it would have to be unequal treatment in like circumstances. That is, we have to imagine if the butcher in the twin premises had taken out a wall, and started renovation works on his property in similar circumstances, and had not engaged with Mr Inman and building control, would he have been treated any differently. Would he have been treated more favourably than Mr Ahmed, and of course he would not. It is absolutely plain to the Tribunal that the reason for the notice was that it was considered in good faith and on reasonable grounds that there was risk of injury to persons in that property arising from the works. Mr Ahmed agreed that above the rear staircase there was unsupported chimney masonry which could fall. Further the front first and second floor chimney breasts were unsupported at the ground level.
 39. The idea that this notice was served as some form of victimisation is without evidential foundation. We have found Mr Inman a witness of truth about it, as indeed, we consider the inspector in this matter, Miss Shiffer, to be. The notice has been issued in good faith for good reasons.
 40. As far as the remaining parts of the grounds of appeal are concerned, it cannot be said that there is no risk to persons within the premises arising from the works. It was absolutely clear that another person had also worked in the premises, and may do so in the future, and we were told that was Mr Ahmed’s brother, but in any event “another person”.
 41. As for employees and the lack of them, which is another ground of appeal. We find that Mr Ahmed is not directly employing any employees at the premises. We did not hear a great deal, but that is what he says, and the images and other evidence corroborate that, broadly.

42. His submission though appears to ignore that the provision applies to injury to any other person. He himself is a person, and it would be entirely wrong for a state regulator to ignore, as it were, the risk to any person within those premises, whoever they are. That ground has no merit. We add that the costs of a fatality or a profound injury or even a slight injury do not fall on the injured person or the deceased person. The burden and grief falls on their friends, family and the state, including the NHS. The idea that risk of injury should be ignored because it is “me” ie Mr Ahmed doing the work, is plainly misconceived.
43. The final ground of appeal is on the basis that the inspector is taking instruction from the local authority. That is also plainly not the case. We accept the oral evidence that her enforcement team/health and safety team (albeit not Miss Shiffer personally because it was before her time) had been involved in a case of a chimney breast collapse and the death of a young construction worker. It is unsurprising, faced with a building control surveyor saying, “I have been unable to meet the proprietor or the person carrying out the works at the property and I am very concerned”, that the inspector would deal with this matter as she has in these circumstances. She has statutory responsibility for health and safety in the construction sector.
44. That deals with the merits of the appeal, of which there are very little, albeit the overall impression given by the notice is that Mr Ahmed himself has removed chimney stacks, and on that we broadly speaking accept his position that he has not (or had not at the point of the notice).

Conclusion and Decision

45. We come to our decision about what steps we take in relation to the notice. We cannot, given our conclusions above, cancel it. The options remaining are to affirm it as it stands, or to affirm it with modifications.
46. We consider that it is very important when a draconian notice or injunction of this kind is issued to a contractor or controller of premises, that there is absolute clarity about the matters considered to be causing risk in the premises at the time, and why the notice is being issued. That is in the interests of justice on general principles. We consider, having explored matters during this hearing, that a modification is required arising from our findings of fact about the property and what in fact existed on the ground. Further the form of address for Miss Ahmed ought to be correct.
47. Turning to the notice at page 25, we modify the section which begins after the words “the said risks are” and we consider Mr Inman’s words, who visited and reported matters, should replace the words of Miss Spicer in the advice that she provided on 28 M 2023. Miss Spicer was very fair in her oral evidence and very clear that whatever impression was given by the notice the risk that she had advised for and considered there was localised collapse and falling masonry and that in the two locations with which we were concerned was entirely supported by the photographs and other evidence that we had in front of the Tribunal and it was a very measured way of describing the circumstances.
48. To that extent we modify the notice and then it is absolutely clear that the circumstances on the ground were those as described by Mr Inman at the time, also taking into account Miss Spicer’s, as structural engineer reviewing matters on paper in March.

49. The modification will apply to the notice to both Mr Ahmed and Miss Ahmed. Both notices are to be amended as follows: *After “and the matters which give rise to the said risks are:” substitute -*

“The chimney at the front of the property is supported by a piece of timber under the chimney’s mid feathers;

The rear chimney has about 1.5m of chimney remaining on the second floor and again not supported on the underside; and

The rear chimney is not supported between first and second floors;

And there is a risk of local collapse of the chimney structures/masonry and injury from falling masonry, rendering the property structurally unstable or weakened and unsafe.”

50. It seems to us that the recipient of a notice needs to have that clarity in the issue of a notice in circumstances where there are two chimneys at the property and the structure is as we have described it. That clarity helps identify where the risks arise and so we modify it to that extent, replacing the current words: *“the chimney and its supporting structures have been removed without suitable replacement of any form additional support mechanisms rendering a property structurally unstable or weakened and unsafe.”*
51. Were we satisfied, on the evidence of a competent person - a structural engineer or otherwise - that the risk had been sufficiently addressed, plainly we would not maintain the notice at all. Indeed, the Inspector was clear that if, by this appeal, she had been satisfied the matters had been addressed, she would not have opposed the appeal. We were not so satisfied.
52. The decision of the Tribunal in this case will be documented in the same way that we address other decisions of this Tribunal. A short Judgment will be signed by me today and it will come to the parties as soon as it can sensibly be sent. The reasons that I have recorded will only be provided to the parties if a request is made, and if a request is to be made, it must be copied to the other party and it must be made within 14 days of the short Judgment being sent to the parties.
53. As far as the ongoing position between the parties is concerned, it is clear to the Tribunal, as we have indicated in our reasons, that there was risk of injury or worse, and the notice was served in good faith to protect against that risk. In order for the inspector to be satisfied that the risk has been addressed, the works must be assessed to establish whether the mitigating measures in place sufficiently address that risk. We were told an engineer’s report would cost a few hundred pounds, and it seems to the Tribunal that no doubt Miss Ahmed and Mr Ahmed between them, given this is an investment property, can attend to that in the way that they have attended to a report supporting the sufficiency of the RSJ.

JM Wade
Employment Judge Wade

Date 29 September 2023