



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

Case reference : **BIR/00FY/HPV/2023/0001**

Property : **Townhouse 2, 122-124 Lower
Parliament St, Nottingham NG1 1EF**

Applicant : **Miss G Trotter**

Representative : **None**

Respondents : **Nottingham City Council**

Representative : **Ms S Bashir, Solicitor, Nottingham City
Council Legal Department**

Type of application : **Appeal against prohibition orders
issued under the Housing Act 2004**

Tribunal member : **Judge C Goodall
Mr A McMurdo MCIEH**

**Date and place of
hearing** : **13 October 2023 by video hearing**

Date of decision : **24 October 2023**

DECISION

Summary

The Tribunal quashes the Prohibition Orders dated 27 March 2023 relating to the use of stairs to those aged over 60, and to the use of the right hand ground floor bedroom and the basement bedroom at Townhouse 2, 122-124 Lower Parliament St, Nottingham NG1 1EF for sleeping accommodation.

Background

1. This is an appeal against a prohibition order and a suspended prohibition order issued by Nottingham City Council (“the Council”) on 27 March 2023 to the Applicant in respect of her property at Townhouse 2, 122-124 Lower Parliament St, Nottingham NG1 1EF (“the Property”).
2. The appeal application form was received by the Tribunal on 24 April 2023 (it was wrongly dated 24 March 2023). Directions were issued as a result of which the Council have provided a statement of case. The Applicant relies upon the statement of case set out in her appeal form.
3. The Tribunal listed the appeal for hearing on 13 October 2023 by video hearing, following an inspection of the property by the Tribunal. The Council did not attend the inspection due to a mix-up over the start time.
4. At the video hearing, the Applicant attended, assisted by her mother, Mrs Michaela Trotter. The Council was represented by Ms Sabina Bashir, Solicitor, and Ms Renate Atkinson, the compliance officer who had conduct of the case.
5. This is the written determination of the Tribunal on the appeal with reasons as appear below.

Law

6. The Respondent is responsible, under statute, for the operation of a regime designed to evaluate potential risks to health and safety from deficiencies in dwellings, and to enforce compliance with the standards required. The scheme is called the Housing Health and Safety Rating System (HHSRS). It is set up in the Housing Act 1984 (“the Act”), supplemented by the Housing Health and Safety Rating System (England) Regulations 2005 (“the Regulations”).
7. The scheme set out in the Act is as follows:
 - a. Section 1 (1) provides for a system of assessing the condition of residential dwellings and for that system to be used in the enforcement of housing standards in relation to such premises. The system (which is the HHSRS system) operates by reference to the existence of Category 1 or Category 2 hazards on residential premises.

- b. Section 2 (1) defines a Category 1 hazard as one which achieves a numerical score under a prescribed method of calculating the seriousness of a hazard. A Category 2 hazard is one that does not score highly enough to be a Category 1 hazard. The scoring system is explained later.
 - c. "Hazard" means any risk of harm to the health or safety of an actual or potential occupier of a dwelling which arises from a deficiency in the dwelling.
8. Section 4 of the Act provides the procedure to be followed by a local authority before commencing any enforcement action. If the local authority becomes aware that it would be appropriate for any property to be inspected with a view to determining whether a hazard exists, it must carry out an inspection for that purpose.
9. Section 5(1) of the Act provides that:

“If a local authority consider that a category 1 hazard exists on any residential premises, they have a duty to take the appropriate enforcement action in relation to the hazard”.
10. Section 5(2) says that the appropriate enforcement action means whichever of the following courses of action is indicated. Those courses of action are:
 - Improvement notice
 - Prohibition order
 - Hazard awareness notice
 - Emergency remedial action
 - Emergency prohibition order
 - Demolition order
 - Declaration of a clearance area
11. Section 5(3) says that if only one course of action within Section 5(2) is available to the authority in relation to the hazard, they must take that course of action. Section 5(4) says that 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.
12. By section 7 the authority has a power (but not a duty) to take action in respect of a category 2 hazard. The enforcement options for a category 2 hazard are slightly different from the options for a category 1 hazard, but they include the power to issue an Improvement Notice, make a Prohibition Order, or issue a Hazard Awareness notice.
13. Section 9 of the Act provides that the UK Government may give guidance to local authorities about exercising their functions (including in relation to enforcement by a Prohibition Order). The local authority must have

regard to the guidance. Two relevant sets of guidance have been issued; the first called Operating Guidance and the second called Enforcement Guidance, both dated February 2006.

14. Section 20 of the Act gives greater detail of the requirements for a Prohibition Order for a category 1 hazard if the local authority decides to issue one (and they must take some form of remedial action under section 5 above). If the premises are an HMO or a dwelling, the local authority may prohibit the use of the dwelling or the HMO. Section 21 allows a Prohibition Order to be made in respect of category 2 hazards.
15. Section 22 specifies that a Prohibition Order must specify:
 - a. Whether the notice is served under section 20 or 21 of the Act
 - b. The nature of the hazard and the residential premises on which it exists
 - c. The deficiency giving rise to the hazard
 - d. The premises in relation to which remedial action is to be taken in respect of the hazard and the nature of that remedial action, and
 - e. Any remedial action which the local authority consider appropriate in view of the hazard or hazards in respect of which the order is made.
16. Section 22(4) gives the local authority the power to specify whether the prohibition is for all purposes or for a particular purpose.
17. Section 24 provides that the Prohibition Order comes into effect at the end of 28 days beginning with the date the Order is made.
18. Section 23 permits the suspension of a Prohibition Order and section 25 provides for revocation or variation of a Prohibition Order. The local authority must revoke an Order if at any time they are satisfied that a hazard in respect of which the Order was made does not exist on the premises.
19. Schedule 2 Part 3 of the Act deals with appeals in relation to Prohibition Orders. Paragraph 7 sets out a general right of appeal and that an appeal is to what is now the First-tier Tribunal (Property Chamber).
20. Paragraph 11 states that the appeal is to be by way of a rehearing but may be determined having regard to matters of which the authority was unaware. The tribunal may confirm, quash, or vary the Prohibition Order.
21. Turning to the method of determining whether a category 1 or category 2 hazard exists (i.e., the operation of the HHSRS), this is set out in the Regulations. The procedure is summarised as follows:
 - a. There are 29 specific hazards that are identified in Schedule 1 of the Regulations as risks, and these are known as “prescribed hazards”.
 - b. The first step is for an assessor to establish, in relation to a prescribed hazard, the likelihood, during the period of 12 months beginning with

the date of the assessment, of a relevant occupier suffering any harm as a result of that hazard. Guidance under s9 of the Act gives national average likelihoods for each prescribed hazard but the assessor makes an individual assessment.

- c. The assessor's assessment of the likelihood is converted into one of 16 representative scale points on a range of likelihoods, 1:1 (i.e., certain) to 1:5600 (i.e., very unlikely). The scale points are set out in paragraph 6 of the Regulations.
- d. The second judgement for the assessor is the possible harm outcomes, that could affect a person (who is a member of the most vulnerable group) as a result of the hazard actually occurring. This is done by assessing the range of outcomes (of which there are 4 distinct classes) by means of the average spread of harms for each dwelling type (which are provided in operating guidance) and the characteristics of and conditions at, the individual dwelling. Each of the 4 classes of harm are attributed a representational scale point which are the harm outcome scores.
- e. The assessor then uses the two judgements made (the representational scale point for the likelihood of harm for the prescribed hazard and the four harm outcome scores) to produce a single hazard score using a formula set out in Regulation 6(5). Most assessors will use a computer model for this calculation.
- f. The hazard score will be a single integer. That integer identifies the hazard as a category 1 hazard if the integer is 1,000 or more, and a category 2 hazard if the integer is less than 1,000. Each hazard is also prescribed a band, between A and J according to its actual calculated score, as set out in paragraph 7 of the Regulations.

22. Paragraph 4.18 of the Enforcement Guidance states:

“Satisfying the requirements of the current Building Regulations, the supporting Approved Documents and relevant standards and Codes of Practice will usually achieve the Ideal for the majority of hazards as described in the operating guidance. In a few cases, the Ideal might be at a higher level that Building Regulations require. In practice, the difference will be negligible and is extremely unlikely to result in enforcement action.

23. In exercising its task under paragraph 11 of Schedule 2 of the Act, the Tribunal is to make up its own mind on the issue raised in the appeal, but it is required to give special weight to the decision of the local authority and only depart from it if thinks the local authority's decision was wrong.

The Prohibition Orders

24. Two Prohibition Orders were made on 27 March 2023, being:

- a. An order that “The stairs from the ground floor to the basement and the ground floor to the 1st floor in 2 Townhouse, 122-124 Lower Parliament Street, Nottingham NG1 1EF are prohibited from use by persons aged 60 or over”; and
 - b. An order that “the use of the basement bedroom and ground floor right bedroom in 2 Townhouse, 122-124 Lower Parliament Street, Nottingham NG1 1EF are prohibited from use as sleeping accommodation”.
25. The second of these Orders was suspended until 15 October 2023 being the point of expiry of the term of the current tenants’ contracts.
26. Remedial works were suggested, being:
 - a. In relation to the stairs, provide a new staircase with a pitch no greater than 42 degrees, a width of 1000mm or greater, tread lengths between 280mm and 360mm, riser heights between 100mm and 180mm, round section handrails set at a height of 900mm to 1000mm, and to comply with approved document K.
 - b. In relation to light, to alter the layout of the Property so that all bedrooms have access to a window which can be opened and can provide a view of the external areas and provide natural light to the bedrooms.

Inspection

27. The Property is part of a former factory building which was converted into residential accommodation in around 2002. It is set behind a property known as the Edge on Lower Parliament Street in Nottingham, and it can be accessed through an external service gate which provides vehicular and pedestrian access to the Property.
28. The front entrance is accessed up a short set of metal steps to what we will call the ground floor, though it is in fact a few feet higher than the external ground level.
29. To the immediate right of the front steps is a lobby that houses the internal staircase for the Property. Inside the front door is a hallway / corridor, off which are two bedrooms, one to the left and one to the right of the entrance door. The staircase is accessed by turning sharp right to the staircase lobby.
30. The stairs are metal spiral stairs leading up to the communal accommodation in the Property located on the first floor, and down to a basement bedroom which is mainly below ground.
31. The Tribunal’s measurements of the key features of the spiral staircase were:

- a. From the ground floor - number of steps to basement bedroom: 15.
Number of steps to communal accommodation: 18.
 - b. Width – central winder to handrail: 830mm.
 - c. Riser height: 210 – 220mm.
 - d. Tread depth: 80mm (inner) to 360mm (outer).
 - e. There is a short stretch of straight stairs leading from the spiral staircase to the first floor. These stairs had treads of 300mm and risers of 210mm. There was no variation in the tread depth at this point.
32. There is a handrail on the outer edge of the stairs and on the inner side upon entry into the spiral staircase, but no inner handrail once the stairs wind around the central hub.
33. The landings on the ground and first floor immediately adjacent to the stairs are of metal construction. The landing at the bottom of the stairs to the basement bedroom is carpeted.
34. The basement bedroom is a substantial size, measuring around 5.2 x 6.5m, with one corner being portioned off for an en-suite bathroom. Being mainly below ground, the only natural light is from a window oriented immediately below the front door of the Property. The aperture of the window is 1240mm width x 620mm height. The sill level is 1900mm above the finished floor. The front steps to the Property significantly obstruct the available light from the window.
35. The basement bedroom has three ceiling pendant lights. We understand that the Applicant also supplied two free-standing bedside lights to all bedrooms, though these were not on display on our inspection. The bedroom was occupied by a tenant who was working at a computer. He was using a tenant supplied light source positioned over his computer, in addition to the artificial light from the pendants. It was very apparent that the available artificial light was more than adequate for his needs. Had there been no artificial light on at all, it would not have been possible to read a book or work in that bedroom.
36. The ground floor right-hand side bedroom measured approximately 4.2m x 3m, with an en-suite taken out of the floor area to the rear right hand side of the room. There was one window, at the rear of the room. It was set high in the wall (height - floor to window sill 1.23m). The aperture was 295mm wide and 410mm high. The window looked on to a breeze block wall positioned very close to the window, so provided very little light. The tenant's desk was positioned in front of the window, and a double bed was positioned to the right of the entrance door.
37. Artificial light was provided by four downlight spots set in to a ledge built in to the en-suite wall, and one wall light over the bed. One in particular lit the tenant's desk area adequately. As for the basement bedroom, the

natural light alone would have been insufficient for reading or working at a desk.

38. The Council had no issues with any other feature of the Property. They consisted of a second bedroom accessed from the ground floor and overlooking the front of the Property through a full sized window, and the communal area on the first floor. That area is the living area, with well-appointed kitchen and a lounge area within a total area of in the region of 30sqm. Most of the front wall of that living area is in glass, so there is plenty of natural light. Velux windows were also provided to the ceiling.
39. The Property as a whole is a modern conversion of good quality, providing well-appointed city living accommodation that the Tribunal considers would be attractive for young professional tenants.

The Applicant's case

40. The Applicant told the Tribunal that she had bought the Property in around 2010 following its conversion into residential accommodation in about 2002. She had lived in it herself briefly, but she was now letting it. Her policy was to rent to young professionals (not students) who were a cohesive group willing to sign a joint tenancy.
41. The overall problem with the Prohibition Order relating to light is that two of the three bedrooms would be unlettable. The house was not viable as a one bedroom property.
42. In her statement of case, as amplified at the hearing, the Applicant made the following points in support of the overall objective of persuading the Tribunal to quash the Prohibition Orders:

Stairs

43. The stairs are in conformity with Building Regulations and National Standards and are in good condition. Nothing was picked up relating to any lack of conformity with Building Regulations when she purchased the Property.
44. The landing in the basement is carpeted.
45. The Applicant does engage contractors from time to time, such as plumbers or for boiler maintenance, and she has no control over the ages of those contractors.
46. Although she would not be in breach of the Prohibition Order if she continued with her current letting policy (apart from inadvertent breaches over which she would have no control), she did not want the Property to be burdened by an unnecessary restriction that could cause her problems in the future, particularly with respect to a sale.

Light

Ground floor bedroom

47. The tenant has raised no complaint about light levels and took the letting being wholly aware of the lighting in the bedroom.
48. The amount of light has been affected by the construction of the breezeblock wall. The Applicant believes that to be in breach of planning regulations. She said that she had raised this with the Building Inspectors, who had visited and stated that the recent construction of the wall is not acceptable and is unlawful. The Council have the means of substantially alleviating the lighting problem through their own enforcement action and she should not be penalised if they have failed to do so.
49. Prior to construction of the breezeblock wall, which she was unable to date accurately but which was probably around 2019/20, there had been a garden / courtyard area to the rear of the Property. The light levels would have been considerably better, and in her view were fine for normal use of the bedroom at that point.

Basement bedroom

50. As for the ground floor bedroom, the tenant was well aware of the light levels and was happy to rent the room.
51. There is some light penetration through the window. The external stairs, which do obstruct some light, but have open risers.

General

52. All tenants signed up to the tenancy with full knowledge of the light conditions.
53. The house has a substantial, attractive, and well-lit lounge area for use at any time.
54. The letting cohort take the tenancy as a group and would be expected to be able to relate well to each other, thus minimising the risk of household tensions and inability to escape from each other. The risk of serious psychological effects from the bedrooms is very low.

The Council's case

55. The Council's compliance officer had prepared a written statement and gave oral evidence at the hearing.
56. The compliance officer had inspected on 9 September 2022 and again on 27 January 2023. An HHSRS assessment of the Property identified the existence of a category 1 hazard relating to Falling on Stairs, and two category 2 hazards relating to Lighting.

Stairs

57. The Falling on Stairs assessment had been carried out using a Likelihood score of 56, against a National Average of 409. The outcome scores (spread of harms) used had been (with the national average score in brackets):

Class I – 4.60 (2.60)

Class II – 10.00 (5.20)

Class III – 21.50 (19.40)

Class IV – 63.90 (72.80)

58. This had produced an overall score of 1,127 (Hazard Band C). The Council was therefore under a statutory duty to take enforcement action.

59. In her statement, the compliance officer accepted that the stairs complied with the requirements of BS 5395 relating to a spiral staircase installed as a main staircase in a domestic dwelling. Those standards are:

Table 1 – BS 5395 extract:

EXTRACT FROM BS5395 part 2	Minimum Clear Tread Width	Riser Height	Minimum Inner Going	Minimum Centre Going	Maximum Outer Going
Category B – Main Private Stair	800mm – typical minimum diameter 1800mm	170-220mm	120mm	190mm	350mm

60. The compliance officer did not accept however that the stairs complied with the standards set out in the Operating Guidance. That Guidance identified matters affecting the likelihood and harm outcomes that the compliance officer considered to be relevant to her HHSRS assessment as follows:

- a. Tread lengths of less than 280mm
- b. Riser heights of greater than 180mm
- c. Opening in stairs greater than 100mm
- d. Stair width less than 1000mm
- e. Lack of handrails to both sides
- f. Pitch of stairs greater than 42 degrees

g. Hard surfaces

61. The compliance officer's conclusion was therefore that despite the stairs being compliant with Building Regulations (and so with BS5395), they still presented enough risk to be scored as a Category 1 hazard, in respect of which the Council were under a duty to take enforcement action.

Light

62. The Lighting hazard was scored as a Category 2 hazard. Separate assessments had been made for each bedroom affected by the Prohibition Order. The HHSRS scores were:

Ground floor right hand bedroom – 589

Basement bedroom – 982

63. The Council had the power to take enforcement action in relation to lighting.
64. The Council's concerns regarding lighting were:
- a. that it would be extremely difficult to perform tasks such as reading without artificial light as natural light levels were below the required average. In response to questions, the compliance officer was unable to inform the Tribunal what the required average was;
 - b. the tenants would be unable to determine the outside weather conditions, and
 - c. the lack of a view.
65. The tenants were thus at risk of impacts such as depression, psychological affects, and eye strain.
66. The Council accepted that the amount of artificial light to the bedrooms provided is of acceptable quality. It also accepted that the occupying tenants were a cohesive group, and both of these factors were stated to have been taken into account in the HHSRS assessment. However:
- “the cumulative effect of having to use artificial lighting to perform basic daily tasks within the affected rooms, along with the lack of an outside view and the need to go to a separate part of the dwelling to determine the outside weather, would have a substantial psychological impact.”
67. In the Council's view therefore, having to live in the bedrooms identified as having poor natural light would have a severe psychological impact upon the tenants and justified the service of a Prohibition Order.
68. In relation to the light issue, upon cross-examination the compliance officer:

- a. Agreed she is not a psychologist and has no special expertise in assessing the likelihood of a psychological illness arising;
 - b. Said she had not made any technical assessment of light levels, though the department did have equipment that could be used to assess lux levels;
 - c. Resisted the suggestion that most people use artificial light to read in many normal circumstances;
 - d. Agreed that the Property was a nice property;
 - e. Confirmed that she had not made any assessment of the costs or impact upon the Applicant of being unable to rent more than one bedroom in the Property;
 - f. Stated that she had made an enquiry of the Council's planning department in July 2023 relating to the breezeblock wall and had been told by a new officer that he was not aware of any breach of planning. There was no written record of this contact.
69. So far as the stairs issue was concerned, the compliance officer said on cross-examination:
- a. She had not measured the pitch of the stairs;
 - b. She accepted that a user of spiral stairs might go more carefully due to the constantly changing path of ascent / descent;
 - c. She was not able to comment on what the impact of paragraph 4.18 of the Enforcement Guidance might have on the Tribunal's deliberation;
 - d. She gave the example of paddle stairs as a type of stair that might comply with building regulations, and yet be a Category 1 hazard;
 - e. She accepted that there was no disrepair to the stairs.

Discussion

70. The HHSRS system is about reducing risks to the health and safety of occupants of a building. Not all risks however can be eliminated. Paragraph 1.14 of the Operating Guidance provides:

“1.14 Some hazards, however, are necessary or unavoidable, and others are considered desirable or expected because the perceived benefits outweigh the risks. For example, electricity is hazardous but considered necessary; stairs (however well designed) are hazardous but necessary in any multi-storey dwelling. For such hazards, the design, construction and maintenance should be such as to reduce to a minimum the probability of an occurrence which could result in harm and of the potential harm that could result.

71. Our task is to decide whether hazards are present at the Property, and if so what, if any, enforcement action should be taken. If we agree that a Category 1 hazard exists, enforcement action of some kind must be taken. We must give special weight to the Council's decisions, and only depart from them if we think they are wrong.
72. We will address each hazard in turn.

Falling on Stairs

73. The issue here is that it is agreed by both parties that the stairs in the Property comply with Building Regulations, Approved Document K, and with BS5395. It is agreed that they are in good condition and there is no disrepair.
74. The Council are correct that in some respects (as per the Operating Guidance – see para 78 below) some elements of the specification of the stairs are relevant to consideration of both the likelihood and spread of harms selected when calculating the hazard score under HHSRS. But of course, the matters referred to are not standards to be complied with; they are simply relevant matters to be taken into account when assessing the hazard score.
75. We have some difficulty with the idea that spiral stairs designed to comply with BS5395 are so hazardous that they constitute a category 1 hazard. If this is so, there must be many such sets of spiral stairs throughout the country that are not safe, at least for all users.
76. Our view is that paragraph 1.14 of the Enforcement Guidance should also be taken into account in our determination. We should be slow to reach a conclusion that where a structure complies with Building Regulations, it is such a serious hazard as to justify enforcement action, certainly at the level of a Prohibition Order.
77. There seem to us to be two options. Either the stairs at the Property are not safe for those aged over 60, in common with many other spiral staircases throughout the country, or something has gone wrong with the hazard scoring.
78. Paragraph 21.30 of the Operating Guidance sets out 21 relevant matters that may affect the likelihood in a HHSRS assessment (see paragraph 21 above for an explanation of that term). The Council consider that five of those are relevant, as set out in paragraph 60 a-e above. We agree that they may be relevant, but:
 - a. The tread length of the stairs in the Property is 330mm maximum. Generally, people using spiral stairs will be most likely to use the widest part of the step. We are not convinced that tread length has a significant impact upon the likelihood;
 - b. Overall width, at 810mm, felt quite adequate to us at inspection:

- c. Although there is no handrail on the inside of the spiral, it is quite straightforward to run a hand down the spiral itself to support or steady a person using the stairs;
 - d. We agree that there is a 30mm difference between the riser height set out in BS5395 and the riser height in paragraph 21.30b of the Operating Guidance. Likewise, there are parts of the stairs with openings greater than 100mm. We do not agree that the differences are substantial and significant.
79. Paragraph 21.31 of the Operating Guidance sets out six factors that may affect the severity of the harms outcomes in a HHSRS assessment (again – see paragraph 20 above). The Council say two of these are relevant matters, being pitch of the stairs and the hard surface.
80. It is difficult for us to take account of the pitch of the stairs as we have no calculations. Most spiral stairs are made of metal and are constructed of a hard surface. The bottom of the staircase however is carpeted.
81. The Council's scoring increases the likelihood of harm occurring approximately seven-fold. We do not believe there is a firm basis for this. Consideration needs to be given to sections 21.11 and 21.12 in the Operating Guidance in relation to the greater care taken on winders leading to a reduction in the occurrence of accidents. Further it is highlighted that were an accident to occur the outcome would be less severe when compared with straight steps. The reasoning for this is that the distance fallen would be reduced. Equally, in terms of harm outcomes, whilst we accept that hard surfaces would be likely to result in more serious injuries than carpeted stairs, this needs to be off set against the fact that a user of a spiral staircase is unlikely to fall as far as would be likely on a straight stretch of stairs. We have some reservations concerning whether the relevant matters provided in the guidance were intended to be applied to spiral staircases given that they do not reflect the British Standards.
82. We have inevitably to make a judgement. Our view is that, with respect to the Council, the decision to categorise the stairs as constituting a category 1 hazard is difficult to accept. The stairs are not, of course, risk free, but they do not, in our view constitute an unacceptable risk to those aged over 60. We do not agree that a scoring in excess of 1,000 is likely to be the result of a properly undertaken HHSRS assessment.
83. We have also taken into account the difficulties for the Applicant in complying with this Prohibition Order, and the Council with enforcing it. At least in respect of regular contractors engaged in work at the Property, it would be impossible for the Applicant to monitor compliance without requiring her to impose contractual obligations on her contractors that most would not accept as they would verge on the edge of being unreasonable.

84. Our view is that the Prohibition Order relating to the stairs dated 27 March 2023 should be quashed, and we so order.

Light

85. The Tribunal agrees that the natural light in both bedrooms is not good. Both windows are at high level, and the light at that level is poor anyway; for the basement bedroom because the entrance stairs block the light, and for the ground floor right hand side bedroom, because the breezeblock wall has the same effect. The artificial light in both rooms, however, is good.
86. The Council may wish to revisit the possibility that the light levels in the ground floor bedroom are as low as they are because of illegal works in constructing the breezeblock wall.
87. The adequacy of the natural light is therefore not in issue. The question is rather whether harm arises as a result of it being poor, and if so whether other factors are sufficient to alleviate the risk of harm arising.
88. In our view, the Council has not given adequate consideration to, firstly, the availability of the other facilities in the Property, secondly the existence of adequate artificial light, thirdly to the level of risk of psychological harm arising to the tenants, and fourthly, to the impact of the prohibition on the use of the Property.
89. On our first point, the Property is, in our view, an attractive, well-modernised house suitable for residential accommodation. There is plenty of light in the entrance way and in the first floor communal accommodation, which itself is well-appointed and spacious. The cohort of tenants are a cohesive group, who have chosen to share together. While natural light levels are low in the bedrooms, they are more than adequate elsewhere.
90. On our second point, we are uncomfortable with the proposition that the Council's compliance officer is able to determine the likelihood that tenants will suffer from severe psychological impact from sleeping in the affected bedrooms.
91. The Operating Guidance says that depression and psychological affects can be caused by inadequate light, not that they will be caused. It is also said that there is a weak quantitative evidence base.
92. The Council's case is that no-one should live in the two affected bedrooms because to do so would cause a severe psychological impact. With respect, we do not consider that that is a conclusion the Council could reasonably have reached. The compliance officer has no specialist knowledge allowing her to reach such a conclusion. The proposition is unsupported by any evidence, perhaps in the form of research, journal articles, or other texts.

93. We cannot ourselves reach such a conclusion.
94. In our view, at its highest, the position is that there is a risk that a person living in one of the affected bedrooms might suffer psychological harm. Against that risk must be set the availability of the other accommodation in the Property and the support that such a person would be expected to receive from the cohesive group of tenants living in the Property. We regard the risk as being unlikely to be high.
95. Our third point is that there is adequate artificial light. This must, almost by definition, be the primary solution to poor natural light. In our view, the two affected bedrooms were useable with artificial light. There are of course many times during a year when there is very limited or no natural light, and yet bedrooms are useable during such times.
96. Our fourth point relates to the impact upon the Applicant. Again, with respect to the Council, there is no solution to the problem of limited window openings in the affected bedrooms. The remedial works suggested are unworkable in our view.
97. If the Prohibition Order were confirmed, it would have the effect of rendering the Property a one-bedroom property. The impact would be likely to result in a very considerable financial loss to the Applicant.
98. Our view is that the Council's decision to impose the Prohibition Order in relation to light was not supportable on the evidence and so it cannot be sustained. Bearing in mind our views set out above, our determination is that the Suspended Prohibition Order relating to light dated 27 March 2023 be quashed.

Appeal

99. Any appeal against this decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal the party appealing must apply, in writing, to this Tribunal for permission to appeal within 28 days of the date of issue of this decision (or, if applicable, within 28 days of any decision on a review or application to set aside) identifying the decision to which the appeal relates, stating the grounds on which that party intends to rely in the appeal, and stating the result sought by the party making the application.

Judge C Goodall
Chair
First-tier Tribunal (Property Chamber)