



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

Case References : (1) BIR/OOFY/HPO/2023/0005
(2) BIR/OOFY/HPO/2023/0007
(3) BIR/OOFY/HIN/2023/0008

Subject Properties : (1) 3 Wiverton Road, Nottingham NG7 6NQ
(2) 27 Palin Street, Nottingham NG7 5AD
(3) 97 Burford Road, Nottingham NG7 6BA

Applicant : Housing 35 Plus Limited

Representative : Anthony Collins Solicitors LLP

Respondent : Nottingham City Council

Type of Application : (1) and (2) Applications under paragraph 7(1)
of Schedule 2 to the Housing Act 2004 to
appeal against prohibition orders in respect of
the subject properties

(3) Application under paragraph 10(1) of
Schedule 1 to the Housing Act 2004 to appeal
against an improvement notice in respect of
the subject property

Tribunal members : Deputy Regional Judge Nigel Gravells
Mr Andrew Lavender BSc (Hons), CEHP

Date of decision : 14 March 2024

DECISION

Introduction

- 1 This is the decision of the Tribunal on three appeals by the Appellant against two prohibition orders made and one improvement notice served by the Respondent in relation to properties owned or managed by the Applicant.
- 2 Nine further appeals relating to properties owned or managed by the Appellant were consolidated and listed for hearing with the three appeals.
- 3 However, following agreement at the hearing and subsequently, in relation to those nine appeals, the Respondent is satisfied that the required remedial action has been completed. The Respondent has therefore revoked the prohibition orders in respect of 69 Fisher Street and 97 Burford Road and the improvement notices in respect of 27 Palin Street, 43 Kingsley Road, 3 Wiverton Road, 69 Fisher Street, 29 Eland Street, 70 Repton Road and 201 Burford Road. In the view of the Tribunal, no formal order is required to confirm those revocations.

Background

- 4 Housing 35 Plus Limited ('Housing 35') is a Co-operative Society registered under the Co-operative and Community Benefit Society Act 2014. It prioritises providing housing for single persons over the age of 35 who might otherwise be homeless. With no requirement of a deposit and, where prospective occupiers are in receipt of benefits, no rental payment in advance, Housing 35 provides accommodation for persons who might have difficulty in securing rented accommodation in the traditional private sector.
- 5 Housing 35 owns or manages a portfolio of more than 50 properties, which comprise a mixture of studios and bedsits with communal kitchens and bathrooms.
- 6 Although Housing 35 seeks to maintain the subject properties in a reasonable state of repair (and the properties are inspected by a contractor on a regular basis in order to identify deficiencies), the Respondent was prompted to inspect the properties following questions raised as to the licensed status of 3 Wiverton Street and 97 Burford Road and a complaint from one of the occupiers of 29 Palin Street. Those inspections culminated in the making of prohibition orders and the serving of improvement notices in relation to the three properties.
- 7 As noted above, the three appeals were consolidated and listed to be heard together with nine other appeals; and Directions were issued for the determination of the appeals.
- 8 On 3 January 2024 the Tribunal inspected the subject properties. Present at the inspections were (i) Alex Pridmore (CEO of Housing 35) and Sajeel Ahmed (Consultant), representing the Appellant, and (ii) Katherine Rallings (Principal Environmental Health Officer) and Helen Chadburn (Environmental Health Officer), representing the Respondent.
- 9 A hearing was held at Nottingham Justice Centre on 8-9 January 2024. The Appellant was represented by Jonathan Manning, of Counsel; and the Respondent was represented by Andrew Lane, of Counsel, and Sabina Bashir, solicitor for the Respondent.
- 10 In accordance with paragraph 15(2) of Schedule 1 and paragraph 99(2) of Schedule 2 to the Housing Act 2004 ('the 2004 Act'), the appeals are by way of a re-hearing and may be determined having regard to matters of which the Respondent was unaware.

- 11 Evidence was given by (i) Mr Pridmore, (ii) Richard Tacagni, a Chartered Environmental Health Practitioner with London Property Licensing, instructed by the Appellant and (iii) Ms Chadburn.

Statutory regime

- 12 Part 1 of the 2004 Act contains a scheme for the enforcement of housing standards by reference to the existence of hazards and an assessment by local housing authorities of their seriousness.
- 13 Section 5 provides that, if a local housing authority considers that a category 1 hazard (the most serious type of hazard) exists on any residential premises it must take appropriate enforcement action. Where a less serious, category 2, hazard is found section 7 confers a power on the authority to take enforcement action but imposes no obligation to do so.
- 14 Enforcement action includes the service of an improvement notice and the making of a prohibition order. Section 8 requires an authority which has decided to take enforcement action to prepare a statement of its reasons for taking that action.
- 15 Sections 11 to 19 and Schedule 1 contain provisions about improvement notices. An improvement notice is a notice requiring the person on whom the notice is served to take such remedial action in respect of the hazard concerned as is specified in the notice. Remedial action in this context means action (whether in the form of carrying out works or otherwise) which in the opinion of the authority will remove or reduce the hazard. Section 13 is concerned with the contents of an improvement notice. The notice must specify the nature of the hazard and the premises on which it exists and in relation to which the remedial action is to be taken; and the notice must state what remedial action is required, the date by which that action must commence and the date when it must be completed.
- 16 Sections 20 to 27 and Schedule 2 contain provisions about prohibition orders. A prohibition order imposes a prohibition on the use (for all or any specified purposes) of (part of) premises on which category 1 or category 2 hazards exist. The local authority must revoke a prohibition order if at any time it is satisfied that the hazard in respect of which the order was made does not then exist; and the order may specify remedial action which the local authority consider would, if taken in relation to the hazard in respect of which the order was made, result in the revocation of the order.

Preliminary issues

- 17 It is convenient first to consider a number of preliminary issues.

Informal/formal enforcement action

- 18 Mr Manning, on behalf of the Appellant, argued that the Respondent should have sought initially to address the identified deficiencies and resulting hazards in the subject properties by informal discussion with the Applicant. He referred to section 9 of the 2004 Act, which requires local authorities to have regard to the *Housing Health and Safety Rating System Enforcement Guidance*, issued by the Office of the Deputy Prime Minister in 2006. That guidance refers to the Enforcement Concordat (now replaced by the Regulator's Code), which provides a basis for fair, practical and consistent enforcement. Mr Manning also noted that the Respondent's own policy makes reference to the use of informal action and he questioned whether the Respondent had adhered to that policy and its adopted

principles of proportionality and consistency in the enforcement of HHSRS in the present cases.

- 19 Although the statutory guidance encourages an informal approach to enforcement, such an approach is not mandatory and in exercising their professional judgment the officers of the local authority may reasonably conclude that informal action is inappropriate in the circumstances of particular cases.
- 20 Mr Lane, on behalf of the Respondent, cross-examined Mr Pridmore and took him through the witness statements of Mathew Adams and Helen Chadburn in relation to each of the subject properties. Those statements, which set out the Respondent's dealings with the Appellant in relation to the properties, recorded repeated instances of the Appellant failing to respond to emails seeking to address the reported deficiencies in the properties, failing to attend arranged inspections and insisting on formal notices under sections 235 (power to require documents to be produced) and 239 (power of entry) of the 2004 Act. Mr Pridmore's only response was to question whether letters and emails from the Respondent had been received by the Appellant and/or whether letters and emails from the Appellant had been received by the Respondent.
- 21 The Tribunal finds that Mr Pridmore's suggestion of widespread failure in correspondence between the parties implausible, especially since the parties had previously agreed that the Respondent should send correspondence for the Appellant to multiple postal and email addresses. Moreover, the Appellant's argument that the Respondent should have pursued informal enforcement action is difficult to reconcile with its own insistence on formality in relation to property inspections and the provision of documentation.
- 22 The Tribunal therefore determines that it was reasonable and appropriate for the Respondent to pursue formal enforcement action in respect of the deficiencies in the subject properties.

Formal validity of the orders and notice

- 23 In the Scott Schedule agreed by the parties the Appellant questioned the formal validity of the prohibition orders and improvement notice that are the subject of the current appeals. In each case the Appellant questioned the correctness of the operative date.
- 24 In the view of the Tribunal, Mr Lane refuted any such challenges in his skeleton argument.
- 25 In any event, at the hearing Mr Pridmore clearly stated that the Appellant was not pursuing its earlier challenges to the formal validity of the orders and notice.

Reissued prohibition order in relation to 3 Wiverton Road

- 26 The original prohibition order in relation to 3 Wiverton Road was defective because it failed to include a statement of the reasons for the Respondent's decision to take the particular enforcement action, as required by section 8 of the 2004 Act. When the Respondent discovered the omission of the section 8 statement, a replacement prohibition order (identical to the original in all other respects) was made.
- 27 In the Scott Schedule the Appellant questioned the validity of the replacement order on the ground that the Respondent had already purported to make a prohibition order relating to the same property and the same hazards.

- 28 In the view of the Tribunal, the Appellant's argument (which was not seriously pursued at the hearing) is without merit. The Respondent informed both the Appellant and the Tribunal when it discovered the defect in the original order and the second order was clearly intended to replace and supersede the original order. Moreover, there was no evidence that the Appellant had been prejudiced by the making of the second order.

Arguments in relation to completed remedial works

- 29 In the Scott Schedule the Appellant indicated that, notwithstanding that certain remedial works required by the improvement notice relating to 97 Burford Road (and by the notices relating to some other properties which have been revoked) had been completed, it wished the Tribunal to determine what the Appellant perceived to be points of principle raised by the notices.
- 30 The Tribunal is of the view that it is inappropriate to make determinations which have no relevance to the live issues before the Tribunal.

Substantive challenges to the orders and notice

- 31 By the time of the hearing much of the remedial work specified in the prohibition orders and improvement notices had been completed. Indeed, in relation to the three live appeals, the only remaining issue was the alleged hazard of crowding and space in the three subject properties. However, while the challenged enforcement action in relation to 3 Wiverton Road and 27 Palin Street are prohibition orders, the challenged enforcement action in relation to 97 Burford Road is an improvement notice.
- 32 It is appropriate to set out the wording of the schedules to the orders and notice relating to the prohibition (where appropriate), the deficiencies giving rise to the hazard and the remedial action required.

(i) 3 Wiverton Road

The prohibition of any person(s) using room 3, room 6 and room 7 for the purposes of sleeping

Room 3 (7.92m²), room 6 (8.03m²) and room 7 (9.26m²) do not meet the current 'Nottingham' space standards for HMOs. These rooms are currently empty. However, for the purposes of the HHSRS, the current occupation is disregarded in the assessment of the dwelling.

The dwelling provides adequate sleeping, living and recreational space for up to 5 persons On this basis, the dwelling is satisfactory. However, there is a mis-match between the current occupying household and the number of rooms. If rooms 3, 6 and 7 were reoccupied in the current layout the property would be significantly overcrowded and there would be insufficient cooking and bathing facilities to accommodate more than 5 occupants.

The remedial action required for the revoking of the prohibition order is –

Redesign of the property to ensure the property will meet the space and HMO amenities guidance 1 – kitchen and kitchen facilities in licensable HMOs, 2 - bathing and toilet facilities for licensable HMOs and 3 - space provisions for licensable and non-licensable HMOs.

(ii) 27 Palin Street

The use of the basement room and the first floor rear bedroom [is] prohibited for sleeping and living purposes at all times and the occupancy of the property is limited to 4 persons

(The identified hazard in the basement room was lighting and remedial action has been taken to remove the hazard and permit the room to be used.)

The first floor rear bedroom measures 6.81m². Taking into account the existing amount of communal space provided by the shared kitchen and shared living room, the first floor rear bedroom is found to be below a satisfactory size.

The current dining space measures 10.7m² which is insufficient for the number of tenants (6) in the property.

The current size of the shared kitchen measures 6.5m² which is inadequate to enable the current number of tenants (6) to safely prepare and cook food.

The remedial action required for the revoking of the prohibition order is –

- a) *Increase the size of the first floor rear bedroom to a minimum of 8.0m².*
- b) *Ensure there is a shared dining space in the property, available for use of the occupants. The shared dining space shall provide a minimum of 2.0m² per person. Any shared dining space shall be suitably and conveniently located such that food can be carried from the kitchen to the dining area without going up or down stairs.*
- c) *Ensure there is adequate kitchen space in the property, available for use of the occupants. Where the kitchen [is] used by up to five (5) persons, the minimum size shall be 7.0m². Approximately 2.0m² shall be added to the kitchen for each additional tenant sharing the kitchen.*

(iii) 97 Burford Road

The kitchen is 7.67m² and the dining area 7.32m² which is shared by 11 occupants. (Whilst rooms 3, 11 and 12 have their own ensuite and kitchenette facilities they still have access to the shared facilities.)

Rooms 2, 4, 5, 6, 7, 8, 9 and 10 do not meet the minimum space requirements (10.0m²) for HMOs where there is insufficient additional breakout space within the dwelling.

The action required by the improvement notice is –

Redesign of the property to ensure the property will meet the space and HMO amenities guidance 1 – kitchen and kitchen facilities in licensable HMOs, 2 - bathing and toilet facilities for licensable HMOs and 3 - space provisions for licensable and non-licensable HMOs.

- 33 Some of the Respondent's room measurements in the orders and notice were disputed by the Applicant. The Tribunal therefore took its own measurements of the relevant rooms during the inspection of the subject properties on 3 January 2024. The Tribunal's measurements are accepted by the parties –

3 Wiverton Road

The Tribunal's measurement for the kitchen area was 10.68m² (compared with the Respondent's measurement of 6.9m²); the measurements for rooms 3, 6 and 7 were 7.85m², 7.95m² and 9.1m².

27 Palin Street

The Tribunal's measurement for the first floor rear bedroom (including the built-in wardrobe) was 7.44m²; the measurements for the kitchen and dining areas were 8.1m² and 10.77m².

97 Burford Road

The Tribunal's measurements for the kitchen and dining room were 8.0m² and 7.91m²; the measurement for room 4 was 6.51m² (compared with the Respondent's measurement of 6.1m²).

Evidence of Mr Tacagni

- 34 Mr Tacagni was instructed on behalf of the Appellant to undertake an independent assessment of the issues arising in the current appeals (and those that are no longer live). Although Mr Tacagni did not visit the subject properties and did not carry out his own HHSRS assessment, he made a desktop assessment based on the enforcement notices, the relevant statutory and non-statutory guidance, floor plans of the subject properties (provided by the Appellant), the agreed Scott Schedule and the Respondent's document bundle.
- 35 Mr Tacagni's observations on the subject properties are summarised in the following paragraphs.

3 Wiverton Road

- 36 First, the Respondent assessed the adequacy of the room sizes by reference to its own HMO guidance, which is not a prescribed standard for HHSRS assessments.
- 37 Second, the Respondent departed from the HHSRS operating guidance by failing to make an assessment for each unit of accommodation and instead making an assessment for the whole property.
- 38 Third, the Respondent failed to make the supplementary assessment based on actual occupation, required in the case of crowding and space. Instead, although four of the eight rooms in the property were unoccupied at the time of the inspection, the Respondent made a notional assessment based on anticipated occupation by eight people. Since the Respondent acknowledged that the property was suitable for five occupants, it followed that at the time of the inspection there was no crowding and space hazard.
- 39 In Mr Tacagni's view, the above departures from the HHSRS operating guidance were not rectified by an assessment of individual rooms made after the original (defective) prohibition order but before its replacement since the Respondent still failed to make the supplementary assessment based on actual occupation of the property.
- 40 Fourth, Mr Tacagni noted the subsequent reconfiguration of the property: the Applicant had created a larger kitchen/dining room suitable for five persons and Mr Tacagni anticipated that the room could accommodate a second set of kitchen facilities if suitable dining space were provided elsewhere on the ground floor.

27 Palin Street

- 41 First, it was not clear why the Respondent concluded that there was a lower risk of harm in the first floor rear bedroom (the smallest bedroom in the property) when compared with the assessment of risk in the whole property.
- 42 Second, in Mr Tacagni's view there are good reasons for including built-in wardrobe space when measuring the floor area of a bedroom.
- 43 Third, the Respondent listed the size of the first floor rear bedroom as a deficiency because it did not meet its own prescriptive HMO guidance and without reference to the relevant matters in the HHSRS operating guidance.
- 44 Fourth, in Mr Tacagni's view the first floor rear bedroom should be reassessed in the context of possible minor alterations to the configuration of the living space.
- 45 Fifth, given the Respondent's concern about the lack of living/dining space, Mr Tacagni saw no obvious reason for prohibiting the first floor rear bedroom from use for living purposes.

97 Burford Road

- 46 First, the Respondent assessed the adequacy of the room sizes by reference to its own HMO guidance, which is not a prescribed standard for HHSRS assessments.
- 47 Second, the Respondent departed from the HHSRS operating guidance by failing to make an assessment for each unit of accommodation (together with any rooms, areas or facilities shared with other persons). Instead, it made an assessment for the whole property which contains a mixture of self-contained accommodation and exclusive use accommodation with shared facilities. Individual assessments were only made after the Applicant appealed against the improvement notice.
- 48 Third, there was some uncertainty as to the accuracy of the Respondent's measurements of room 4.
- 49 Fourth, in any event the HHSRS operating guidance imposes no minimum sizes, although room size measurements for HMO licensing purposes are prescribed by the Licensing of Houses in Multiple Occupation (Mandatory Conditions of Licences) (England) Regulations 2018; and the minimum room size for a single person is 6.51m².
- 50 Fifth, Mr Tacagni expressed significant concerns about the schedule of required remedial work: (i) rooms 3, 11 and 12, for which there appeared to be no individual crowding assessment, should be excluded from the schedule of works; (ii) the works included the redesign of the bathing and toilet facilities but no deficiencies were noted in relation to these facilities; (iii) it is not practicable to increase the size of room 4; (iv) it is not realistic to consult with the Respondent, obtain planning and/or building control consent and undertake the required work within the stated period of three months.
- 51 Sixth, Mr Tacagni suggested that various options could be explored in order to remedy any crowding hazard.
- 52 Mr Tacagni was cross-examined by Mr Lane. First, he confirmed that he had not visited any of the subject properties nor carried out his own HHSRS assessment; and that his report was based on a necessarily more limited desktop assessment. Second, he agreed (i) that the Respondent's officers, who had visited the properties, were required to exercise their professional judgment in making their HHSRS assessments and (ii) that professional judgments may differ. Third, he expressed

the view that, when making HHSRS assessments, every case is different and that an assessment may properly involve a balancing exercise: for example, a smaller-than-ideal bedroom may be offset by large communal areas. Fourth, he expressed the view that the revised measurements for 3 Wiverton Road and 27 Palin Street did not ‘significantly’ or ‘dramatically’ affect his comments on those properties.

Evidence of Ms Chadburn

- 53 In his cross-examination of Ms Chadburn, Mr Manning largely focussed on the significant weight attached to the Respondent’s own HMO amenities guidance in making HHSRS assessments – both in the identification of deficiencies and the specification of required remedial works. Ms Chadburn persisted in her view that the use of the Respondent’s HMO guidance as a baseline and starting point in identifying deficiencies and in specifying remedial work was both appropriate and sensible.
- 54 Ms Chadburn stated that, in assessing the hazard of crowding, it was appropriate to take account of the fact that currently unoccupied rooms were likely to be occupied in the next twelve months.
- 55 When questioned about the prohibition on the use of particular bedrooms at 3 Wiverton Road, notwithstanding that those rooms were not the smallest in the property, Ms Chadburn stated that the rooms in question were unoccupied and that Respondent did not wish to make the occupants of other rooms homeless.
- 56 On the specification of remedial action, Ms Chadburn endorsed the approach taken in relation to 3 Wiverton Road and 97 Burford Road. The Respondent wished to avoid being over-prescriptive and was prepared to discuss alternative remedies.

Submission of the parties

- 57 For the Appellant, Mr Manning submitted, first, that it was clear on the face of the orders and notice that the Respondent attached very significant – and excessive - weight to its own HMO Amenity Guidance on space provision, kitchen facilities and bathing and toilet facilities. In relation to 3 Wiverton Street and 97 Burford Road, both the statements of the deficiencies and the statements of required remedial action make repeated express reference to the requirement to comply with the Respondent’s HMO guidance; and in the statements in relation to 27 Palin Street that requirement is clearly implied. Mr Manning submitted that in effect the Respondent’s assessments of the properties were based on their own HMO guidance rather than the HHSRS operating guidance and that under the 2004 Act the Respondent was not entitled to adopt such an approach.
- 58 Second, Mr Manning submitted that the Respondent failed to follow the HHSRS operating guidance on crowding and space. First, in relation to 3 Wiverton Street and 97 Burford Road, the Respondent made a single assessment of the property as a whole whereas the HHSRS operating guidance requires a separate assessment for each unit of accommodation. Second, in relation to 3 Wiverton Street the Respondent failed to make the required supplementary assessment based on the actual occupation of the units of accommodation.
- 59 Third, Mr Manning submitted that the Respondent failed to apply its own guidance consistently when balancing the size of bedrooms, the size of communal spaces and the overall layout of the particular property. For example, in relation to 27 Palin Street, the remedial action required the shared dining space to be on the same floor as the kitchen but no such requirement was imposed in relation to other properties.

- 60 Fourth, Mr Manning submitted that the statements of required remedial action in relation to 3 Wiverton Street and 97 Burford Road failed to *specify the nature* of the required remedial action in any practical or meaningful way and that it was not sufficient to require the Appellant to *redesign the property* in consultation with the Respondent's Safer Housing team. Moreover, he submitted that such vagueness was unacceptable where failure to comply with an improvement notice might give rise to criminal liability.
- 61 For the Respondent, Mr Lane submitted, first, that the Appellant's argument that the Respondent's approach to HHSRS assessment was flawed by reason of excessive use of its HMO guidance was not borne out by the facts: the Respondent had clearly sought to balance the size of bedrooms with the available communal space in each property and had not adhered rigidly to the required room sizes set out in the guidance.
- 62 Second, in relation to the required remedial action, Mr Lane submitted that the approach of the Respondent allowed for flexibility and negotiation with the Appellant.

Determination of the Tribunal

Relevance of the Respondent's HMO guidance

- 63 It is not disputed that in making its HHSRS assessments of the subject properties the Respondent attached very considerable weight to its own HMO amenity guidance and the requirements as to minimum room sizes.
- 64 That guidance requires a minimum floor area of 8.0m² for a one-person bedroom where there are adequate cooking and dining facilities elsewhere in the property. That figure increases to 10.0m² where there is no lounge/dining space elsewhere in the property. It is apparent from the prohibition orders and improvement notice in the present appeals that the Respondent also prescribes minimum floor areas to determine the adequacy of kitchen and dining space.
- 65 The HHSRS operating guidance issued by the relevant national authority includes no such prescribed requirements as to room sizes.
- 66 It is therefore to be determined whether the approach of the Respondent to the hazard of crowding and space is compatible with the HHSRS operating guidance.
- 67 Even if it is acceptable to apply guidance designed for the determination of HMO licensing issues to HHSRS assessments, the requirement of 8.0m² for a one-person bedroom is significantly higher than the minimum floor area requirement of 6.51m² laid down in the Licensing of Houses in Multiple Occupation (Mandatory Conditions of Licences) (England) Regulations 2018 ('the 2018 Regulations'). Moreover, the prohibition orders and improvement notice in the present appeals suggest that the Respondent permits only marginal deviations from its prescribed floor area figures.
- 68 In the view of the Tribunal, since the size of rooms is clearly relevant to the issue of crowding and space, the stipulation of indicative minimum requirements can only assist consistency in decision-making. However, the Respondent should not treat its minimum requirements as if they were mandatory inflexible statutory rules (*Clark v Manchester City Council* [2015] UKUT 129 (LC)). This need for flexibility is all the greater where the Respondent's minimum requirement is significantly higher than that set out in the 2018 Regulations.

- 69 The views of the Respondent are relevant and merit respect; but once the Tribunal has carried out its own inspection and considered all of the characteristics of the subject property, including the size and layout of individual rooms and any compensating amenities or facilities, it will be in a position to make its own assessment of the hazard of crowding and space in the property.

3 Wiverton Road

Prohibition order

- 70 The formulation of both the statement of deficiencies and the statement of required remedial action focusses on the need to comply with the Respondent's own HMO amenities guidance. In the view of the Tribunal, that approach attaches excessive weight to the guidance.
- 71 More significantly, the Respondent failed to make the supplementary assessment of the units of accommodation required by paragraph 4.30 of the HHSRS operating guidance. At the time of the inspection, the three rooms of which the use is prohibited by the prohibition order (rooms 3, 6 and 7) were unoccupied and could not therefore suffer from the hazard of crowding.
- 72 The Tribunal further finds that the statement of required remedial action is imprecise and impracticable.
- 73 The Tribunal therefore orders that the prohibition order in relation to 3 Wiverton Road be quashed.
- 74 In the view of the Tribunal, even if the property were fully occupied, the Respondent's assessment of the hazard of crowding and space would be overstated. If one of the existing eight bedrooms (such as the ground floor rear room (room2)) were redesignated as dining space, the property would be suitable for occupation by seven persons.

Improvement notice

- 75 The Tribunal invited the parties to make representations on the issue whether the Tribunal has jurisdiction under Part 3 of Schedule 2 to the 2004 Act to substitute an improvement notice for a quashed prohibition order.
- 76 Both parties submitted, and the Tribunal accepts, that the Tribunal has no such jurisdiction.
- 77 Moreover, in the view of the Tribunal, since the Appellant did not appeal against the prohibition order on the ground that an improvement notice was the best course of enforcement action in relation to the identified hazard, paragraph 12 of Schedule 2 (which requires the Tribunal (at the request of either party) to include a finding to that effect) is not engaged: see paragraph 12(3), (4) of Schedule 2.

27 Palin Street

Prohibition order

- 78 The formulation of both the statement of deficiencies and the statement of required remedial action focusses on the need to comply with the Respondent's own HMO amenities guidance. In the view of the Tribunal, that approach attaches excessive weight to the guidance.
- 79 More significantly, the Respondent's measurements understate the size of the first floor rear bedroom and the kitchen. The first floor rear bedroom (including the built-in wardrobe) measures 7.44m² (compared with the Respondent's requirement

of 8.0m²). The Tribunal considers the built-in wardrobe to be usable space. The kitchen measures 8.1m² (compared with the Respondent's requirement for six persons of 9.0m²) and the dining space measures 10.77m² (compared with the Respondent's requirement for six persons of 12.0m²).

- 80 The Respondent's requirements for kitchen and dining areas appears not to take into account the different patterns of usage by the occupants of the property – and the unlikelihood of all the occupants seeking to use those facilities at the same time.
- 81 Taking a broader approach to the HHSRS assessment and making an appropriately more flexible application of the Respondent's amenities guidance, the Tribunal determines that the making of the prohibition order cannot be justified.
- 82 The Tribunal further finds that in so far as the statement of required remedial action includes increasing the size of the first floor rear bedroom, it is impracticable.
- 83 The Tribunal therefore orders that the prohibition order in relation to 27 Palin Street be quashed.

Section 49 charge

- 84 The Respondent demanded payment of a charge for expenses incurred in serving the *improvement notice* in respect of 27 Palin Street; and the Appellant appealed against that charge as part of its appeal against the underlying improvement notice.
- 85 However, as noted above, the Respondent has revoked the improvement notice.
- 86 Although the Tribunal has jurisdiction to confirm, reduce or quash such charges where it allows an appeal against the underlying notice (see section 49(7) of the 2004 Act), the 2004 Act appears to make no provision for the present case where the underlying notice is revoked.
- 87 In the view of the Tribunal, the logical consequence of the interdependence of the underlying improvement notice and the demand pursuant to section 49 is that the revocation of the notice removes the basis for the demand.
- 88 The Tribunal therefore orders that the section 49 demand is not payable.

97 Burford Road

Improvement notice

- 89 The formulation of the statement of required remedial action and (by necessary implication) the statement of deficiencies focusses on the need to comply with the Respondent's own HMO amenities guidance. In the view of the Tribunal, that approach attaches excessive weight to the guidance.
- 90 Three of the 11 rooms in the property have their own ensuite bathroom and kitchenette facilities. The Tribunal determines that those rooms should be disregarded in the assessment of crowding and space in the remaining eight rooms and the availability of communal areas and facilities.
- 91 All eight bedrooms meet the national room size requirements prescribed by the Licensing of Houses in Multiple Occupation (Mandatory Conditions of Licences) (England) Regulations 2018.
- 92 Taking a broader approach to the HHSRS assessment and making an appropriately more flexible application of the Respondent's amenities guidance, including the provision of additional facilities within the existing rooms (such as a dishwasher

and a combination oven/microwave), the Tribunal determines that the serving of the improvement notice cannot be justified.

- 93 The Tribunal therefore orders that the improvement notice in relation to 97 Burford Road be quashed.

Summary

- 94 The Tribunal orders that the prohibition order in relation to 3 Wiverton Road be quashed.
- 95 The Tribunal orders that the prohibition order in relation to 27 Palin Street be quashed.
- 96 The Tribunal orders that the improvement notice in relation to 97 Burford Road be quashed.
- 97 The Tribunal orders that the section 49 demand for expenses incurred in serving the improvement notice in respect of 27 Palin Street is not payable.

Appeal

- 98 If a party wishes to appeal this Decision, that appeal is to the Upper Tribunal (Lands Chamber). However, a party wishing to appeal must first make written application for permission to the First-tier Tribunal at the Regional office which has been dealing with the case.
- 99 The application for permission to appeal must be received by the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
- 100 If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason(s) for not complying with the 28-day time limit. The Tribunal will then consider the reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
- 101 The application for permission to appeal must state the grounds of appeal and the result the party making the application is seeking.

14 March 2024

Professor Nigel P Gravells
Deputy Regional Judge