



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

Case Reference : **BIR/00CS/HPV/2023/0002**

Property : **1 Norman Road, Smethwick, B67 5PP**

Applicant : **Muskaan Estates Limited**

Respondent : **Sandwell Metropolitan Borough Council**

Type of Application : **An appeal against an Emergency Prohibition Order under section 45(2) of the Housing Act 2004**

Tribunal Members : **Judge M K Gandham
Mr R Chumley-Roberts MCIEH, JP**

Date and venue of Hearing : **Paper Determination**

Date of Decision : **4 March 2024**

DECISION

Decision

1. The Tribunal orders that the Emergency Prohibition Order be revoked with effect from the date it was made, being 12 July 2023, and that the associated Demand for Payment dated 20 July 2023 be quashed.

Reasons for Decision

Introduction

2. On 8 August 2023, the First-tier Tribunal (Property Chamber) received an application from Mr Sanjive Mahandru, the director of Muskaan Estates Limited ('the Applicant') for an appeal under section 45(2) of the Housing Act 2004 ('the Act').
3. The appeal related to an Emergency Prohibition Order dated 12 July 2023 ('the Order'), served upon him by Sandwell MBC ('the Respondent') relating to the property known as 1 Norman Road, Smethwick, West Midlands, B67 5PP ('the Property'), following a roof leak at the Property.
4. The Applicant holds the Property under a lease dated 26 November 2015 made between (1) Amrik Singh Sidhu and (2) the Applicant for a term of ten years from 26 November 2015, and occupies one of the commercial ground floor units at the Property.
5. The Order detailed, in Schedule 1, various defects at the Property and, in Schedule 2, the remedial action that needed to be carried out in order for the Order to be revoked. The defects detailed in Schedule 1 were all detailed as category 1 hazards and were in respect of Structural Collapse and Falling Elements (Item 1), Fire (Item 2), Damp and Mould Growth (Item 3), Falls between Levels (Item 4), Excess Cold (Item 5), Personal Hygiene, Sanitation and Drainage (Item 6), Food Safety (Item 7) and Electrical Hazards (Item 8). The Respondent served, with the Order, a Statement of Reasons as to why the decision to take enforcement action had been made.
6. On 21 July 2023, the Respondent sent to the Applicant a demand for payment dated 20 July 2023 ('the Demand for Payment') for a £925.65 charge, being the expenses incurred by the Respondent in respect of the Order under section 49 of the Act.
7. In accordance with the directions, the Tribunal received a bundle of documents from both parties, and further submissions from the Respondent on 13 November 2023.
8. Neither party requested an oral hearing and an inspection was arranged for 11 January 2024.

The Law

9. The Act introduced a new system for the assessment of housing conditions and for the enforcement of housing standards.
10. The Housing Health and Safety Rating System (the 'HHSRS') replaced the system imposed by the Housing Act 1985, which was based upon the concept of unfitness. The HHSRS places the emphasis on the risk to health and safety by identifying specified housing related hazards and the assessment of their seriousness by reference to (1) the likelihood over the period of 12 months of an occurrence that could result in harm to the occupier and (2) the range of harms that could result from such an occurrence.
11. These two factors are combined in a prescribed formula to give a numerical score for each hazard. The range of numerical scores are banded into ten hazard bands, with band A denoting the most dangerous hazards and Band J the least dangerous. Hazards in Bands A to C (which cover numerical scores of 1000 or more) are classified as 'category 1 hazards' and those in bands D to J (which cover numerical scores of less than 1000) are classified as 'category 2 hazards'.
12. Where the application of the HHSRS identifies a category 1 hazard the local housing authority has a duty under section 5(1) of the Act to take appropriate enforcement action. Section 5(2) sets out the courses of action (which include the making of an emergency prohibition order (EPO)) that constitute appropriate enforcement action. Where the application of the HHSRS identifies a category 2 hazard the local housing authority has a power under section 7(1) of the Act to take enforcement action in respect of that hazard, however, the making of an EPO is not an option available to them in respect of the same.
13. Section 9 of the Act requires the local housing authority to have regard to any guidance for the time being given by the appropriate national authority about the exercise of their functions in connection with the HHSRS. In February 2006 the Secretary of State issued 'Housing Health and Safety Rating System – Operating Guidance' ('Operating Guidance') which deals with the assessment and scoring of HHSRS hazards. At the same time the Secretary of State also issued 'Housing Health and Safety Rating System – Enforcement Guidance' ('Enforcement Guidance'), which is intended to assist local housing authorities in deciding which is the most appropriate course of action under section 5 of the Act and how they should exercise their discretionary powers under section 7 of the Act.
14. Section 43 of the Act deals with the making of EPOs and section 1 states as follows:
 - “(1) If—
 - (a) the local housing authority are satisfied that a category 1 hazard exists on any residential premises, and
 - (b) they are further satisfied that the hazard involves an imminent risk of serious harm to the health or safety of any of the occupiers of those or any other residential premises, and
 - (c) no management order is in force under Chapter 1 or 2 of Part 4 in relation to the premises mentioned in paragraph (a),

making an emergency prohibition order under this section in respect of the hazard is a course of action available to the authority in relation to the hazard for the purposes of section 5 (category 1 hazards: general duty to take enforcement action)."

15. The person upon whom an EPO is served may appeal to the First-tier Tribunal (Property Chamber) under section 45(2) of the Act and under section 45(5):

*"(5) An appeal under subsection (1) or (2)—
(a) is to be by way of a re-hearing, but
(b) may be determined having regard to matters of which the authority were unaware."*

16. The powers of the tribunal are detailed in section 45(6)(b), which confirms that it may, *"confirm or vary the emergency prohibition order or make an order revoking it as from a date specified in that order."*

17. Section 49 of the Act confirms that a local housing authority may recover expenses relating to enforcement action and section 49(1) states as follows:

*"(1) A local housing authority may make such reasonable charge as they consider appropriate as a means of recovering certain administrative and other expenses incurred by them in –
...
(e) making an emergency prohibition order under section 43;"*

However, under section 49(7) of the Act:

"(7) Where a tribunal allows an appeal against the underlying notice or order mentioned in subsection (1), it may make such order as it considers appropriate reducing, quashing, or requiring the repayment of, any charge under this section made in respect of the notice or order."

Inspection

18. The Tribunal inspected the Property on 11 January 2024 in the presence of the Applicant. No representative attended on behalf of the Respondent.
19. The Property comprises a semi-detached building situated on Norman Road in Smethwick in the West Midlands. There is some parking to the front of the building and a small, unkempt, garden to the rear of it, however, these do not appear to have been demised to the Applicant in the lease.
20. The Property has the benefit of a two-storey extension to the right-hand side (built off the right flank wall) of the original building and single storey rear extensions to the right and left hand sides. Although the original building has a pitched, tiled roof, the extensions all have flat-roofs.
21. The Property, on the ground floor, comprises two commercial businesses with residential premises located on the first floor. The commercial businesses – an

estate agency (belonging to the Applicant) and a beauty salon – are accessed through a common entranceway and communal reception on the ground floor of the building. The residential premises are accessed via an independent staircase leading from a separate ground floor entranceway located next to the beauty salon.

22. The first floor of the Property comprises an entrance hall, a small kitchen, a bathroom, one single bedroom and three double bedrooms. The single bedroom, kitchen, bathroom and one of the double bedrooms are all located in the original building (above the beauty salon and communal reception) and the two further double bedrooms (with the estate agency below), are located within the two-storey extension.
23. On the day of the inspection, the Property was still in the process of being renovated and the Applicant's workmen were on site. The bedrooms in the two-storey extension had been completely replastered and were in the process of being repainted, as was the hallway and bedroom doors. The patio door in the rear (right) bedroom had been removed and replaced by a new window. The washing machine had also been re-sited from the bathroom to the kitchen, with a small worktop having been installed above it.
24. The Property did have the benefit of gas-fired central heating and double-glazed windows and there were ample electrical sockets in each of the rooms, none of which appeared to have been newly installed. There were thumb-turn locks and closers on each of the doors and window-restrictors in the windows, however, some of these had not been properly installed in the unoccupied rooms.
25. On the first floor, only the single bedroom appeared to be occupied, although the Applicant stated that the tenant was currently out of the UK. The Tribunal was unable to gain access to the beauty salon, but it was open for business. The estate agency was still being renovated, with the ceiling in the process of being plaster boarded. A Grade A, interlinked, fire detection and alarm system for the whole building (with sounders on each floor) was located within the ground floor communal reception area.
26. Outside, the rear (right) flat roof balcony did not have the benefit of a railing and the chimney stack (which at it deepest was the depth of six bricks) was also in a poor state of repair.

Submissions

The Applicant's submissions

27. The Applicant appealed the issuing of the Order for two reasons. Firstly, that the Property had already been inspected in 2020 and any defects identified at the time had been rectified and, secondly, that the Order should not have been issued in respect of the entire Property as the leak had not affected the kitchen, the bathroom and two of the bedrooms.
28. Mr Mahandru confirmed that he had been letting the Property for over ten years. He stated that in February 2020, a full inspection of the Property was carried out by

Neena Varma, a Citizen and Consumer Protection Officer with the Respondent. He enclosed a copy of her inspection report letter within the bundle.

29. Mr Mahandru stated that, following Ms Varma's inspection, all items of disrepair identified at the Property had been rectified and signed off by the Respondent, including the installation of 60-minute fire separation between the commercial and residential parts of the building and a fully interlinked fire alarm system.
30. In relation to the issuing of the Order against the entire building, Mr Mahandru stated that, although he accepted that the leak in the right-hand flat roof had caused extensive damage to the two bedrooms in the extension, he submitted that the remainder of the Property was completely undamaged.
31. Mr Mahandru stated that the flat-roof repair had originally been completed by Mr Mark Berry, one of the Applicant's usual subcontractors, with the assistance of Mr Robert Scurtu (the tenant who had made the complaint to the Respondent following the roof leak) in May 2023.
32. Mr Mahandru stated that he had paid for the flat roof to be completely replaced by Mr Berry, but that the replacement had failed to solve the issue. As such, Mr Mahandru stated that he appointed, and paid again, for a new contractor, Mr Lee Fowler, to carry out the works for a second time, with the works having been completed on 14 October 2023. [Mr Mahandru included copies of various payments made to each of the contractors and photographs of the final roof repair].
33. Mr Mahandru submitted that the two tenants who resided within the original part of the building (one of whom he stated suffered with his mental health) felt, as he did, that their rooms were safe. He stated that they had not wanted to vacate the Property, despite the Applicant having offered to rehouse them.
34. In relation to any safety concerns regarding the electrics and fire alarm system, Mr Mahandru referred to two emails in the bundle from Mr David Price, a Fire Safety Advisor at West Bromwich Fire Station, dated 23 June 2023 and 29 June 2023 respectively. The second of these e-mails confirmed that workmen working on the alarm system had tested it in Mr Price's presence and that the sounders on both the commercial and residential parts were working satisfactorily. Mr Price also stated that the workmen had confirmed that the system would be reconnected and fully functional by 5pm that day. Mr Price had also noted, in the same email, that the ceiling in the estate agents was being repaired using pink plasterboard, although linear seals and skimming remained outstanding.
35. The Applicant also supplied, within the bundle, a Gas Safety Record dated 30 June 2023, an Emergency Lighting Periodic Inspection and Testing Certificate and a Fire Detection and Alarm System Inspection and Servicing Report, both dated 27 October 2023.

The Respondent's submissions

36. The Respondent provided within its bundle, two witness statements (with various exhibits) from Ms Jayne Leonard, an Enforcement Officer within the Respondent's

Private Rented Sector and Housing Team, and a supporting witness statement from Ms Sharon Lee, an HMO Licencing Officer employed by the Respondent within its Accommodation Team, who attended an inspection of the Property with Ms Leonard.

37. Ms Leonard confirmed that, on 17 May 2023, a telephone complaint was received from Mr Scurtu, regarding a roof leak and disrepair at the Property. Ms Leonard stated that the Applicant was asked to complete the repairs within seven days.
38. Following correspondence between the Applicant and the Respondent, as the repairs had not been rectified, Ms Leonard stated that she was asked to investigate the same. Ms Leonard confirmed that, on 12 June 2023, she received videos from Mr Scurtu, which showed that rainwater was still coming through the ceiling of the Property into the first floor.
39. Ms Leonard stated that she inspected the Property on 14 June 2023, with her colleague Ms Lee. Although Mr Scurtu was in attendance, she confirmed that the Applicant did not attend.
40. Ms Leonard confirmed that she was only able to inspect two of the bedrooms and the communal areas for disrepair. She stated that the condition of the Property resembled the condition of it in the videos she had received from Mr Scurtu, and that water was still coming into the first-floor residential premises through the ceiling. She stated that the carpet in the first-floor front bedroom was sodden with water.
41. Ms Leonard stated that she completed a HHSRS assessment and identified eight category 1 hazards in respect of:
 - Structural collapse and falling elements;
 - Fire;
 - Electrical hazards;
 - Damp and mould growth;
 - Falls between levels;
 - Excess cold;
 - Food safety; and
 - Personal hygiene, Sanitation and Drainage.
42. Ms Leonard found that the most serious category 1 hazards identified related to the collapsed ceilings and water ingress in close proximity to the electrics and fire alarm cables; that she was unable to confirm whether the electrics were safe from water penetration, and that the absence of 60-minute fire separation between the commercial residential units failed to prevent the spread of smoke in the event of a fire.
43. Having discussed the matter with her manager, she confirmed that a decision was made that an EPO would be the most appropriate course of action, as it would prohibit occupation of the Property for the serious category 1 hazards and safety issues identified and because the hazards posed an imminent risk to the health and safety of occupiers and visitors. She stated that the service of a hazard awareness

notice would not be sufficient due to the significant nature of the hazards and risks they posed.

44. Following further correspondence with the Applicant, in which the Applicant provided various gas and electrical certificates and informed her of the previous inspection by Ms Varma, Ms Leonard confirmed that she still intended to serve an EPO for the reasons previously stated. Ms Leonard confirmed that the Applicant was aware that the residential premises comprised a house in multiple occupation (HMO).
45. Ms Leonard stated that she had also been in correspondence with West Midlands Fire Service regarding the Property and produced the same two emails received from them as were included within the Applicant's bundle.
46. Ms Leonard confirmed that, on 11 July 2023, she received an e-mail from the Applicant stating that all repairs would be completed within 10 days and that the tenants of the affected rooms had been rehoused. Ms Leonard stated that she replied on 12 July 2023, confirming that all occupants would need to be rehoused and that she would still be making an EPO. The Order was made and served on all interested parties the same day.
47. Ms Leonard stated that she visited the Property again on 19 July 2023, to check whether the Order had been displayed, and discovered that the Property was still being occupied by at least one tenant. She noted that boarding had been erected in the hallway to prevent access to the bedrooms in the extension.
48. Ms Leonard confirmed that the Demand Notice was sent to the Applicant on 23 July 2023 and that, following this, she received further correspondence from the Applicant detailing his efforts to find alternative accommodation for the occupiers and asking for assistance with the appeal.
49. Ms Leonard also stated that, despite the Applicant having stated that the roof repairs had been completed in April 2023, it was clear that the roof had not been repaired during the initial inspection. She also stated that she had not received confirmation that the works detailed in the Order had been completed by the time of her writing the statement (16 October 2023) and that the evidence indicated that at least two tenants had remained in occupation of the Property following the service of the Order.
50. In her second witness statement, dated 13 November 2023, Ms Leonard confirmed that she had received emails from the Applicant that month confirming that the roof works had finally been completed. She had also received a letter from an electrician confirming that all electrics were safe for continued use and had been provided with up-to-date electrical and fire alarm inspection reports.

The Tribunal's Deliberations

51. The Tribunal considered all of the evidence submitted by the parties, briefly summarised above. The Tribunal may, under the Act, confirm or vary the Order or make an order revoking it as from a specified date.

52. As set out above, EPOs are a type of emergency measure which local authorities have a discretion to make in relation to residential premises when they are satisfied that a category 1 hazard exists, when that hazard involves an imminent risk of serious harm to the health or safety of any of the occupiers of those or any other residential premises and where no management order is in force under Chapter 1 or 2 of Part 4 of the Act in relation to those premises. In this case, there was no evidence put forward that any management order existed in relation to the Property.
53. Although the Tribunal noted that various works had been completed to the Property on its inspection, the appeal is by way of a re-hearing and not based on works carried out since the Order was made. The Tribunal could take into account, when making its determination, matters of which the Respondent had been unaware at the time, however, the Tribunal found that no such matters had been brought to its attention.
54. The Tribunal, firstly, considered the two arguments put forward by the Applicant. In relation to the previous inspection of the Property by Ms Varma, the Tribunal noted that it took place in January 2020, over three years prior to the inspection by Ms Leonard. Although Ms Leonard did not deny that the Applicant had carried out works to the Respondent's satisfaction at that time, the Tribunal found that, without any evidence that the condition of the Property was the same in January 2020 as it had been at that time of Ms Leonard's inspection (with the same number of occupiers), the Respondent could not be bound by the outcome of that previous interaction between the parties.
55. In addition, even if all of the circumstances had remained the same by the time of the later inspection, the Tribunal found that the Respondent would still have been under a duty to take appropriate enforcement action if it had found that a category 1 hazard existed which had previously been missed. [The Tribunal would hope, in that instance, that the Respondent would have due regard for any misinformation previously given by the Respondent to the landlord when considering what type of enforcement action to take.]
56. In relation to the Applicant's second argument, although the Tribunal accepted that the roof leak had only occurred in the flat roof of the right-hand extension (and where that roof joined onto the roof of the original building), the Tribunal found that this would not necessarily mean that only the bedrooms in the extension should be prohibited from occupation. The Tribunal found that it would depend on the nature of the category 1 hazard and whether that hazard could affect the occupiers in the remainder of the building. In this case, as the Respondent had identified hazards relating to the fire alarm and electrical system, the Tribunal considered that the hazards could potentially affect the whole building.
57. Accordingly, the Tribunal went on to consider whether the criteria for making an EPO under section 43(1) of the Act were met and, if so, whether the making of an EPO was the appropriate enforcement action the Respondent should have taken in this matter under section 5 of the Act.
58. In considering that question, the Tribunal had to consider whether the hazards identified in the Order were category 1 hazards and, if they were, whether such

hazards involved an “*imminent risk of serious harm to the health and safety*” to the occupiers of both the Property and any other premises.

59. In determining the second part of that question, the Tribunal took in to account the comments of the Upper Tribunal in *Bolton Metropolitan Borough Council -v- Patel* [2010] UKUT 334. In relation the meaning of “*serious harm*”, at paragraph 41, the then President of the Chamber, George Bartlett QC stated:

“As far as “serious harm” is concerned, it said that the Act did not offer any guidance as to what sort of harm constitutes “serious harm”. That is correct, but the Regulations do identify a hierarchy of harm – extreme harm (Class I), severe harm (Class II), serious harm (Class III) and moderate harm (Class IV). Thus, for the purposes of the Regulations serious harm excludes moderate harm, and, although there is no express provision requiring the Regulations to identify what harm is serious harm for the purposes of section 40, it is, I think, implicit in section 2 that the Regulations will, or at least may, include this identification. Certainly, it seems to me, an authority could not be criticised if they treated as serious harm any harm falling within Classes I, II and III (excluding, therefore, Class IV), and in my view it would be right for them to do so.”

60. He went on to consider the meaning of “*imminent risk*” and, at paragraph 43 stated:

“As a matter of linguistic analysis “imminent risk” may appear to present something of a problem, since it is clear from the underlying purpose of section 40 that the risk – the chance of serious harm occurring – is, or at least may be, an existing risk. The adjective “imminent” is obviously not there for the purpose of suggesting that the risk must be one that does not at present exist but is likely to arise soon. It is perhaps in the nature of a transferred epithet qualifying “serious harm” – the risk must be one of serious harm being suffered soon. The degree of risk (or the likelihood, or the chance) that a state of affairs may give rise to an incidence of harm is necessarily time-related. That is why the Regulations require an inspector to assess the likelihood of harm being suffered within a specified period. The use of “imminent” implies, in my judgment, a good chance that the harm will be suffered in the near future.”

61. The Tribunal considered each hazard set out in Schedule 1 of the Order. [Screenshots of the said Schedule are annexed in the Appendix.]

Item 1 – Structural Collapse & Falling Elements

62. The Tribunal noted that, in addition to the defective roof, Item 1 referred to the state of repair of the chimney stack and missing loose plaster to the hallway cupboard. The Tribunal found that neither of these deficiencies were category 1 hazards.
63. In relation to the defective roof, although the Tribunal accepted that the roof had allowed water ingress into the two bedrooms located in the extension, causing sections of the ceiling plasterboard and loft insulation to fall into the rooms, the Tribunal did not consider that these defects could be considered a category 1 hazard.

64. The Respondent had not inspected the Property until 14 June 2023, at which point some of the plasterboard had already fallen. Once fallen, those sections of plasterboard could no longer be considered at risk of structural collapse or falling, although, if left uncleared, they could have represented a trip hazard.
65. The Tribunal found that the likelihood of further sections of the plasterboard or insulation falling was relatively low, the inspection having taken place almost a month after the initial failure of the ceiling and at a point when the roof was in the process of being repaired.
66. In any event, the Tribunal found that, even if the risk of collapse of the ceilings and insulation had been a category 1 hazard and the risk was imminent, it did not consider that there was any risk of “*serious harm*” to the health or safety of the occupants as a result of the same.
67. As modern plasterboard ceilings do not collapse as a whole, but in sections, and due to the makeup of its material, the Tribunal found that, at most, any collapse of the ceilings and insulation might have resulted in slight bruising or cuts, which was less serious than the moderate harms listed in Class IV of the Housing Health and Safety Rating System (England) Regulations 2005.
68. Accordingly, the Tribunal found that this hazard was not one for which the Respondent could make an EPO.

Item 2 – Fire

69. In relation to the absence of an interlinked fire detection system, the Tribunal noted that the Respondent had already been informed by West Midlands Fire Service on 29 June 2023, that the alarm system had been tested in their presence and that they had been informed that it would be reconnected and fully functional by the end of the day. As such, the Tribunal found, in the absence of any other evidence, this should not have been included as a hazard in the Order.
70. In relation to the other two defects referred to under this category - the defective overhead door closers and absence of linear joint seals and skimming to the new plasterboards in the estate agency below - as the evidence indicated that the fire detection system was working, the Tribunal found that these defects, on their own, did not represent category 1 hazards.
71. Even if the Tribunal had not been satisfied that the fire detection system was working, the Tribunal noted that the Respondent had failed to provide any information to state why the risk of fire would be “*imminent*”. The decision of the Upper Tribunal in *Bolton* had made it clear that “*imminent*” implied that the harm would be suffered in “*the near future*”. As the two commercial properties located underneath the residential premises posed no particular threat of fire, on the evidence before the Tribunal there was nothing to suggest that any risk was imminent.
72. Accordingly, the Tribunal, again, found that the Respondent could not make an EPO based on any identified fire hazard.

Item 3 – Damp and Mould Growth

73. The Tribunal did accept that damp and mould growth, due to water ingress as a result of the roof leak, could have resulted in a category 1 hazard. The Tribunal did not, however, accept that this hazard would result in an “*imminent*” risk of serious harm to the health or safety of occupiers. As such, the Tribunal found that this would not have been a hazard for which the Respondent could make an EPO.

Item 4 – Falls between Levels

74. The Tribunal accepted that the lack of any external railing from the patio doors in one of the rear bedrooms, together with the failure to have any window restrictors fitted to the first-floor windows, could mean that, at the time the Order was made, these deficiencies represented either a category 1 or a category 2 hazard. The Tribunal also accepted that any harm caused as a result of the same could, potentially, be serious.
75. Despite this, the Tribunal found the Respondent had failed to show why the risk of harm from these hazards was imminent. From the evidence provided, the residential premises had been occupied by adults for some time without any such harms having occurred and the patio doors in the rear bedroom could simply have been locked to eliminate any risk of falls.
76. Again, in the absence of any evidence to show why any risk was imminent, the Tribunal found that the Respondent could not make an EPO based on this hazard.

Item 5 – Excess Cold

77. The Tribunal noted that the building was made of solid brick, with double glazed windows and gas-fired central heating. Although the Respondent had referred to the tenant stating that the radiators did not heat up when the heating was turned on, the Tribunal noted that the Respondent did not appear to have checked to see whether the heating system was working.
78. In the absence of finding that the central heating system was not working, the Tribunal found that none of the items detailed in this section amounted to a category 1 hazard for which an EPO could be made.

Item 6 – Personal Hygiene, Sanitation and Drainage

79. The Tribunal did not consider the fact that there was no working hot water for personal bathing and cleaning on the day of the Respondent’s inspection necessarily represented a category 1 hazard. There was no evidence provided concerning the reason for the absence of hot water, which could have resulted from a variety of causes including actions/inactions by the occupiers or the Applicant. In addition, the Tribunal found that, in any event, this would not involve an imminent risk of serious harm to any occupants. As such, the Tribunal found that the Respondent could not make an EPO in relation to this hazard.

80. Although the Respondent had also referred to an inappropriately sited washing machine within the bathroom, the Tribunal found that this was not, of itself, a hazard. The only potential hazard in relation to the same was the electric cable running through the hallway, which would not be classed as a personal hygiene, sanitation and drainage hazard.

Item 7 – Food Safety

81. The Tribunal agreed with the Respondent, that the kitchen on the first floor was an inadequate size and layout for the amount of occupants, and that there was a lack of storage space and work surface. The Tribunal also found that this could amount to a category 1 hazard.
82. Again, however, the Tribunal found that this did not represent an imminent risk of serious harm and that, consequently, the Respondent could not make an EPO in relation to the same.

Item 8 – Electrical Hazards

83. The Tribunal found that there was sufficient electric socket provision throughout the residential premises and that there was no need for a light switch at the top of the stairs when there was a light switch at the bottom of the stairs. The Tribunal also found that the flickering light bulb at the top of the stairs, without any evidence as to why it was flickering, did not amount to an electrical hazard. The Tribunal, as previously stated, did have concerns regarding the layout of the kitchen.
84. The Tribunal did accept that water ingress near to the electrical fittings did increase the risk of electric shocks, however, found that this did not amount to a category 1 hazard. The Applicant had provided a satisfactory Electrical Installation Condition Report, dated 1 October 2020, and there was no reason to suggest why the risk of a shock or burn had significantly increased as, in most scenarios, the fuse would simply trip.
85. In addition, the Respondent had failed to show why the hazard would involve an “*imminent risk of serious harm*”. The occupiers were all adults who had, since the roof began leaking in May 2023, failed to come to any harm by the time the Order was made on 12 July 2023. In the absence of the Respondent stating why such harm was now “*imminent*”, the Tribunal found that the Respondent could not make an order due to this hazard.

Determination

86. Although the Tribunal found that there were, potentially, four category 1 hazards at the Property, as none of the hazards involved an imminent risk of serious harm to the health or safety of any of the occupiers of either the Property or any other residential premises, the Tribunal found that the Respondent should not have made an EPO.
87. Accordingly, the Tribunal found that the Order should be revoked from the date it was made and that the associated Demand for Payment be quashed.

Appeal

88. If either party is dissatisfied with this decision, they may apply to this Tribunal for permission to appeal to the Upper Tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to the parties (Rule 52 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013).

M K GANDHAM

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Judge M K Gandham

Appendix

SCHEDULE 1

In the opinion of the Council, the Premises known as 1 Norman Road Smethwick B67 5PP contains the following hazards:

ITEM 1

- **LOCATION: Roofs, chimney stack, roof space, ceilings to first floor hallway and bedrooms**
- **NATURE OF THE HAZARD: Structural Collapse & Falling Elements (CATEGORY 1)**
- **DEFICIENCY GIVING RISE TO THE HAZARD:**
 - Chimney stack on main roof in a state of disrepair with missing mortar and is structurally unsound, increased risk of collapse. This may also be a contributory factor for water ingress and damp internally.
 - Defective roofs allowing water ingress internally, causing damp, collapse of ceilings, and water damage to loft insulation.
 - Ceilings and loft insulation collapsing into bedrooms and hallway due to water ingress from defective roof.
 - Missing and loose plaster to hallway cupboard, exposing laths.

ITEM 2

- **LOCATION: Whole Premises (residential and commercial)**
- **NATURE OF THE HAZARD: Fire (CATEGORY 1)**
- **DEFICIENCY GIVING RISE TO THE HAZARD:**
 - Defective overhead door closers to fire doors on the first floor, compromising the effectiveness of the fire door.

- Absence of linear joint seals and skimming to new plaster boards in estate agents office, to provide 60 minute fire resistance between commercial and residential areas.
- Absence of interlinked fire detection, connected to fire alarm panel, in the aesthetic clinic on ground floor, to raise early warning detection to others in the event of a fire breaking out in this ground floor commercial unit.

ITEM 3

- **LOCATION: Ground floor entrance hallway ceiling, first floor hallway, front and rear right bedrooms**
- **NATURE OF THE HAZARD: Damp and Mould Growth (CATEGORY 1)**
- **DEFICIENCY GIVING RISE TO THE HAZARD:**
- Damp, mould growth and water ingress to ceilings on ground floor entrance hallway, first floor hallway and bedrooms.

ITEM 4

- **LOCATION: Windows throughout and rear right bedroom patio door**
- **NATURE OF THE HAZARD: Falls between Levels (CATEGORY 1)**
- **DEFICIENCY GIVING RISE TO THE HAZARD:**
- No suitable balcony or railing to the external area of rear right bedroom patio door to prevent risk of falls if patio doors were to be opened.
- There are no key less window restrictors fitted to first floor side opening windows, to reduce the risk of falls onto the

- hard surfaces below. These are easily accessible to young children.

ITEM 5

- **LOCATION: Whole of the residential parts of the Premises**
- **NATURE OF THE HAZARD: Excess Cold (CATEGORY 1)**
- **DEFICIENCY GIVING RISE TO THE HAZARD:**
 - Property is of solid brick construction, with low thermal efficiency, grade 'E' EPC rating, difficult to warm and keep warm exacerbated by:
 - Defective patio door and glazing to rear right bedroom, allowing draughts to enter into bedroom.
 - Water damaged loft insulation, reducing thermal efficiency.
 - Tenant stated radiators do not heat up when heating turned on.
 - Inter-pane condensation to windows throughout, reducing thermal efficiency.
 - Kitchen window does not close properly, allowing draughts to enter.
 - Single glazed timber front door of poor thermal efficiency.
 - No heating in ground floor entrance hall.

ITEM 6

- **LOCATION:** Whole of the residential parts of the Premises
- **NATURE OF THE HAZARD:** Personal Hygiene, Sanitation and Drainage (CATEGORY 1)
- **DEFICIENCY GIVING RISE TO THE HAZARD:**
 - On day of inspection there was no working hot water for personal bathing and cleaning. No evidence has been provided that this has now been rectified.
 - Inappropriately sited washing machine is plumbed into the shared bathroom, with the electric cable running across hallway, plugged into kitchen wall socket.

ITEM 7

- **LOCATION:** Kitchen
- **NATURE OF THE HAZARD:** Food Safety (CATEGORY 1)
- **DEFICIENCY GIVING RISE TO THE HAZARD:**
 - Kitchen is an inadequate size and layout for four unrelated people who may want to use kitchen at same time as each other.
 - There is a lack of: food storage, space for small and larger every day appliances, kitchen facilities to make safe and hygienic preparation and cooking of food easy for four unrelated occupants.
 - Unable to store food or items in wall unit which is in disrepair, coming away from wall and unsafe to use.
 - No space provision for a washing machine, which is currently located and plumbed in the bathroom.

- No suitable space provision for fridge/freezer, currently located in front of kitchen window, blocking the natural light.
- Insufficient work surfaces for food preparation and the use of every day small appliances such as a kettle and a microwave.

ITEM 8

- **LOCATION: Whole of the residential parts of the Premises**
- **NATURE OF THE HAZARD: Electrical Hazards (CATEGORY 1)**
- **DEFICIENCY GIVING RISE TO THE HAZARD:**
 - Inadequate electric socket provision throughout, resulting in the need for the use of extension cables.
 - Electric socket outlet positioned too close to work top left hand side of cooker, making it difficult to plug appliances in without the need of an adaptor plug.
 - Water ingress to ceilings in ground floor hall and other rooms near to electric fittings, increasing the risk of electric shocks.
 - Light switch at bottom of stairs in ground floor hall, but no switch located at top of stairs to turn light on or off when using the stairs.
 - Light top of stairs flickering.