



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

Case Reference : BIR/00CT/HPR/2024/0001

Property : Garden House, 49 Cornyx Lane, Solihull, B91 2SG

Applicant : Maria Doan DPSI, MBA, BA

Respondent : Solihull Metropolitan Borough Council

Represented by : David Howes MCIEH, CEnvH, Environmental Health Officer

Type of Application : Appeal against Decision by Respondent to refuse to revoke a Prohibition Order under Paragraph 9(b), Part 3, Schedule 2 to the Housing Act 2004

Tribunal Members : Mr I.D. Humphries B.Sc.(Est.Man.) FRICS
Mr R. Chumley-Roberts MCIEH, JP

Date and Venue of Hearing : N/A Paper Determination

Date of Decision : **27 November 2024**

DECISION

DECISION

- 1 The First-tier Tribunal ('the tribunal') varies the Respondent's (Solihull M.B.C.) Suspended Prohibition Order served under sections 20 and 21 of the Housing Act 2004 (the Act), made 7 August 2024. The Order is varied by:
 - 1) confirming Hazard 24, Fire, as a Category 1 Hazard;
 - 2) increasing Hazard 13, Lighting, to a Category 1 Hazard;
 - 3) varying the effective date from 6 December 2024 to the date of its Decision, 21 November 2024, to give immediate effect to the Order.

REASONS

Introduction

- 2 The Applicant is the freehold owner occupier of 49 Cornyx Lane, Solihull, West Midlands, B91 2SG. The property is a detached house in a residential area of Solihull with large rear garden in which the Applicant gained planning consent to build a detached outbuilding to use as a store and leisure building. The outbuilding did not have planning consent for residential use.
- 3 During 2023, the Respondent local authority became aware that the outbuilding was being used for residential purposes. On investigation, it was found that the Applicant together with her two children and father were living in the outbuilding while the main house was being refurbished.
- 4 The Respondent identified several Category 1 and 2 hazards at the outbuilding and considered it inappropriate for residential use. They served a Suspended Prohibition Order on 7 August 2023 to take effect 6 February 2024 to allow the Respondent and her family to remain in occupation until building work on the main house had been completed, at that stage expected to be six months.
- 5 On 7 December 2023 the Applicant advised the Respondents that works to the Garden House had taken place but that works to the main house were delayed. The Applicant therefore requested a variation of the Order. After reinspection the Garden House and noting that some works to it, had been undertaken, the Respondent varied the Suspended Prohibition Order on 22 January 2024, removing some of the hazards from the Order but leaving hazards No.13 relating to lack of light in the basement and hazard 24 relating to fire safety in effect. At the same time, the Respondent extended the effective date of the Order to 6 December 2024 to give further time for work on the main house to be completed.
- 6 On 15 February 2024 the Applicant appealed to the tribunal to revoke or vary the Order.
- 7 The tribunal inspected the outbuilding on 21 November 2024 and having considered the parties' submissions reached its Decision the same day.

The Law

- 8 Under section 20 of the Housing Act 2004, a local housing authority has a duty to make a Prohibition Order preventing occupation if it considers a category 1 hazard exists in relation to residential property to which the Act applies and no management order is in place and it considers that this is the most "appropriate enforcement action" to comply with its duty under section 5 of the Act. If an authority considers category 2 hazards exist they have a 'power', but not 'duty', to make such an Order under section 21 of the Act.

- 9 An Order can be suspended under section 23 of the Act,
- 10 The categories of hazard are listed in Schedule 1 to the Housing Health and Safety Rating System (England) Regulations 2005.
- 11 By paragraph 7(1), Part 3, Schedule 2 of the Act, a person on whom the notice is served can appeal to the tribunal against a prohibition order.
- 12 On receipt of an Appeal, the tribunal is required to reach its Decision by way of re-hearing under paragraph 11(2)(a), Part 3, Schedule 2 to the Act and may confirm, quash or vary a prohibition order under paragraph 11(3), Part 3, Schedule 2 to the Act.

Facts Found

- 13 The tribunal inspected the property on 21 November 2024 with the Applicant, Maria Doan. The Respondent authority was not represented at the inspection.
- 14 No.49 Cornyx Road comprises a main house and outbuilding. The main house is a three storey building with accommodation on the ground and first floors and in a converted loft. The house has been extensively refurbished and now has rendered elevations, new doors and windows and internal improvements. The front garden has been completely paved to provide a parking area with electric gates to the road frontage.
- 15 The rear garden has also been paved, beyond which is a new detached outbuilding adjoining the rear boundary which is the subject of the Prohibition Order. The outbuilding is built to a modernist design with flat roof over the ground floor. It also has a lower ground floor or basement built completely below ground level.
- 16 The ground floor of the outbuilding comprises an open plan lounge / kitchen with wide patio doors to the garden, a small room to the side of the kitchen, shower room and a separate store room accessed from the garden with no direct access from the lounge.
- 17 The small room by the kitchen has no windows or natural light. It was described by the Respondent during the inspection as a 'store' but there was a single bed in the room and the Respondent suggested it could be used as a bedroom in the event that the Prohibition order were confirmed and the basement could no longer be used for bedrooms.
- 18 The separate store accessed direct from the garden has a timber trap door in the floor, hinged to one side. Under the trap is a folding timber ladder leading down to the largest of the basement rooms currently used as a bedroom.
- 19 The main access to the basement is provided by stairs from the lounge. It is entirely open plan with no door between the lounge and stairs. The stairs have a timber handrail with glazed panels beneath but the open plan design means there is no fire break between the stairs and kitchen/lounge.
- 20 The stairs lead down to a hall, off which lead three rooms and a plant room, none of which have any windows. The Applicant advised that the partitions between the rooms were concrete block but while the tribunal was unable to verify their internal construction, they were found to be dry lined, in other words, plasterboard fixed either by concealed timber battens or plaster dabs to the internal structure. The plant room is lined with compound timber boards.
- 21 There are hard-wired smoke alarms fitted to the ground floor and basement ceilings.

- 22 The tribunal were introduced to a Mr George Cowsill who was understood to be a friend of the Applicant and now living in the outbuilding, using the larger basement room as a bedroom and the ground floor as living accommodation.

Issues

- 23 The issues remaining in the Prohibition Order under sections 20 & 21 of the Act are stated in the following terms:

'Category 1

Hazard Profile 24 - Fire

This category covers threats from exposure to uncontrolled fire and associated smoke at a dwelling. The deficiencies giving rise to the hazard:

In accordance with LACORS guidance Housing - Fire Safety, the windowless rooms, within the basement of the outbuilding within the rear garden, being used as bedrooms are categorised as inner rooms because you are required to pass through another room to enable escape in the event of fire.

- 25 There is no protected escape route or secondary means of escape provided to the habitable rooms within the basement of the outbuilding within the rear garden. It is likely that persons would be trapped in the basement because of the unprotected escape route leading up to the open plan living room/kitchen on the ground floor. The lack of fire separation would expose the occupants on the basement to fire/smoke in a short amount of time. Casualties are likely to much more severe in the event of fire.
- 26 (The Notice also noted there were no smoke alarms on the ground floor or basement but this has been rectified).

Category 2

Hazard Profile 13 - Lighting

This category covers the threats to physical and mental health associated with inadequate natural and/or artificial light. It includes the psychological effect associated with the view from the dwelling through glazing.

- 28 The deficiencies giving rise to the hazard:
The rooms in the basement of the outbuilding in the rear garden are not provided with any windows to allow adequate natural light.'

Submissions

Applicant

Mrs Doan provided a written submission in which she asks for the Order to be revoked. Numerous points are made that can be briefly summarised below.

Fire

- 1 The existing staircase is said to be spacious, 1.0 m wide, sufficient to act as a fire exit.
- 2 A folding wooden ladder leading from the main basement room to the store at ground floor level is said to be a secondary fire exit. Mrs Doan says it can be left pulled down and the external door of the store classed as a fire exit.
- 3 All the basement rooms are within 3m of the stairs and 8m of the ladder, which is less than the maximum 18m distance in Approved Document B, Volume 2, 2019 edition of the Building Regulations.
- 4 The risk of fire is low as there are no gas appliances in the outbuilding and the family are non-smokers.
- 5 The family are in good health.

- 6 The outbuilding which Mrs Doan refers to as 'garden house', is 176 m² which is above the UK average house size of 76 m². Similarly, the plot is larger than the UK average.

31 **Lighting**

- 1 There are plenty of lights on the ground floor and basement.
- 2 The living room is 3 times larger than the UK average living room.
- 3 There are bifold doors to the patio.
- 4 The rear garden is larger than the UK average.
- 5 The total outdoor space is 279.5 m².
- 6 As there is ample outdoor space, the basement is only used for sleeping.
- 7 With the bifold doors open, there is ample natural light to the stairs.
- 8 The trap at the top of the drop-down wooden ladder is larger than the minimum window size in the Building Regulations and allows natural light to the basement.
- 9 The door to the separate store can be safely left open as the house has cctv coverage and adequate security.
- 10 There is ample natural light and the family are in good health.

32 **Respondent**

Mr David Howes MCIEH CEnvH for the Respondent sent a written Submission in which he described the outbuilding and explained that the Suspended Order had been issued to allow time for the building works to be completed. Several items in the Order of 7 August 2023 had been deleted as work had been carried out to remedy hazards but the remaining hazards had not been addressed and remained live issues.

- 33 His evidence in connection with the remaining hazards can be summarised as follows.

34 **Hazard No.24 - Fire**

- 1 In reliance on 'LACORS Housing - Fire Safety', the three basement rooms are classed as 'inner rooms' as occupants are required to pass through risk rooms as a fire escape.
- 2 The inner rooms cannot be used as bedrooms as they have inadequate provision to escape fire.
- 3 The rooms have no emergency escape window or access to a protected stairway.
- 4 The pull-down folding wooden ladder is inadequate as a means of escape.
- 5 The main staircase is not a protected escape route.

35 **Hazard No.13 - Lighting**

- 6 It is not accepted that there is adequate natural light from the ground floor to the basement for healthy living.
- 7 In reliance on Guidance in HHSRS para.13.05, it is considered the occupants are at risk of depression and psychological effects due to the lack of natural light.
- 8 The floor trap is considered inadequate and is unlikely to be left open at all times.

36 **Tribunal Decision**

Having inspected the property and read the Submissions the tribunal finds as follows:

37 **Hazard Profile No.24 - Fire**

The tribunal appreciates that the Applicant has fitted hard-wired smoke alarms but they are insufficient on their own to protect the occupants from the risk of fire.

- 38 The tribunal also appreciates that there are no gas appliances and that the family are non-smokers but there could still be a risk to third parties occupying the basement such as Mr Cowsill or others who may or may not be smokers.

- 39 The main staircase is not a protected escape route and the basement occupants would need to pass through a risk area i.e. the kitchen/lounge, to reach an external door (final escape door).
- 40 The basement room doors have self-closers but no intumescent strips which even if fitted, would still not provide the occupants with sufficient means of escape.
- 41 The drop-down ladder is inadequate as a secondary means of escape for several reasons; it is timber and could catch fire, it could be difficult to use by elderly or less able occupants, it may be difficult to raise the hatch at ceiling level and occupants would have to climb up to the top of the room to escape which is more likely to fill with smoke than floor level. In addition, for this to be used by people using the other two bedrooms in the basement, they would have to pass through the basement hallway which is continuous with the stairway up to ground floor level. This area is likely to be quickly affected by flames and smoke as fire spreads from the ground floor.
- 42 The timber panelling to the plant room and likely timber battens supporting the plasterboard wall partitions could only add to the risk.
- 43 The door to the ground floor rear left bedroom (small room by the kitchen) is close to the main area of the kitchen. People exiting this room in the event of fire would have to pass directly by/through the kitchen area. Kitchens having the greatest risk of fire starting.
- 44 For all these reasons, the Category 1 status is confirmed.
- 45 Hazard Profile No.13 - Lighting
There are no windows in the three basement bedrooms. The drop-down ladder hatch may provide some natural light, in the basement left hand bedroom (largest room) if the outside door were left open. This is unlikely to be the case for the majority of the time.
- 46 There is no direct line of light between the patio door windows and the basement rooms. The rooms would have to rely on reflected light in the stairwell and artificial lighting which is considered unhealthy for living accommodation. The fact that the house has a large garden and the Applicant says the family are happy to spend time in the garden instead of the rooms is unlikely to be the case during the winter or inclement weather and the tribunal takes notice of the guidance provided by HHSRS referred to by the Respondent.
- 47 Similarly, the Applicant suggested that the small room by the kitchen could be used as a bedroom in the alternative, but the tribunal notes it is very small (likely to be below the minimum size for a bedroom), has no windows and is also unsuitable for use as a bedroom.
- 48 The tribunal finds the lack of adequate natural light to be a Category 1 hazard and uprates the Order accordingly.
- 49 Effective Date
The Suspended Prohibition Order of 7 August 2023 states:
- 50 'Therefore, the service of a Prohibition Order, suspended for six(6) months is deemed the most suitable course of action as this will allow the owner time to get the main property into a habitable condition and prevent the outbuilding from being used as habitable accommodation thereafter'.
- 51 Its purpose was clear, but as the main house is now habitable and the Applicant's family have moved out of the outbuilding, the tribunal varies the effective date from 6 December 2024 to the date of its Decision on 21 November 2024 to give immediate effect.

I.D. Humphries B.Sc.(Est.Man.) FRICS
Chairman

Appeal

If either party is dissatisfied with this decision an application may be made to this Tribunal for permission to appeal to the Upper Tribunal, Property Chamber (Residential Property) on a point of law only. Any such application must be received within 28 days after the decision and accompanying reasons have been sent to the parties (Rule 52 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013).