FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00AF/HPO/2024/0006**
Property	:	**45A and 45B West Street, Bromley, BR1 1RE**
Appellant/applicant	:	**J K West Limited**
Representative	:	**Mr Douglas Scott, counsel**
Respondent/council	:	**London Borough of Bromley**
Representative	:	**Mr Colin Millward, Housing Surveyor**
Type of application	:	**Appeal against a prohibition order** Sections 20 and/or 21 and paragraph 7(1) of Schedule 2 to the Housing Act 2004
Tribunal members	:	**Judge Timothy Powell & Mr Stephen Mason FRICS**
Venue	:	**10 Alfred Place, London WC1E 7LR**
Date of hearing	:	**13 November 2024**
Date of decision	:	**18 December 2024**

DECISION

Decision

The two prohibition orders made by the London Borough of Bromley in respect of 45A and 45B West Street, Bromley, BR1 1RE are confirmed. The period of suspension is varied by a further six months to 20 June 2025 to give the Appellant time to resolve the defects and deficiencies to Bromley's satisfaction.

Reasons

The appeal

1. This was an appeal against two suspended prohibition orders issued by the London Borough of Bromley ("Bromley") on 20 March 2024. The orders were issued in respect of Flats A and B, 45 West Street, Bromley BR1 1RE, after inspections and assessments under the Housing Health and Safety Rating System ("HHSRS").

2. Flat A was said to contain several Category 1 hazards under two hazard profiles set out in the Operating Guidance for the HHSRS: Crowding and Space; and Falling on Stairs. The property was a House in Multiple Occupation ("HMO") that failed to meet Bromley's adopted space standards: two of the four bedsits, the shared kitchen and common room, the stairs from the ground floor hall down to the shared kitchen in the basement and all the bathroom facilities were either undersized and or substandard. Flat A also contained a Category 2 hazard under the Lighting profile: namely, inadequate natural lighting to the mid front right and mid rear right bedsits.

3. Flat B was said to contain several Category 1 hazards under the Crowding and Space, Collisions and Entrapment, and Position and Operability of Amenities hazard profiles. The property was also an HMO that failed to meet Bromley's adopted space standards: all of the four bedsits, two of the private shower rooms, three of the private WCs and the kitchen were undersized and lacked adequate usable floor space. A Category 2 hazard was identified in the shared kitchen under the Flames and Hot Surfaces profile, as the kitchen was both undersized and substandard.

The hearing

4. The hearing of the appeal took place on 13 November 2024.

5. The Appellant was represented by Mr Douglas Scott of counsel, who was accompanied by Mr Joseph Kahan, director of the Appellant company, J K West Limited. The Respondent local authority, Bromley, was represented by Mr Colin Millward, a housing surveyor, supported by Ms Charlotte Hennessy and Ms Lisa Tingay, both environmental health officers.

6. The Tribunal had the benefit of two hearing bundles, one from each party.

7. As the application was by way of a rehearing of Bromley's decision to issue and serve suspended prohibition orders, and with the agreement of the parties, Bromley put its case first.

Background facts

8. The building at 45 West Street is a semi-detached Victorian house. On 15 November 2019, the Bromley granted planning permission for a single-storey rear/side extension and a loft conversion with rear dormer and roof lights to the front. On 28 January 2021, further planning permission was granted to convert the building into two units. Despite the question having been raised in the proceedings, there was no evidence as to when the conversion works were started.

9. On 1 June 2022, the Appellant company purchased the building, which was then in the process of being converted into two units: Flat A on the ground floor and basement, and Flat B on the ground, first and second floors. On 2 November 2022, Stroma Building Control Limited ("Stroma") submitted to Bromley a final certificate for conversion of the existing dwelling into two 2-bedroom self-contained residential flats, stating that the works were completed on 2 November 2022. Less than a fortnight later, on 15 November 2022, Stroma submitted a second final certificate for conversion of the existing dwelling house into two self-contained HMOs, including single storey rear extension and loft conversion, stating that the works were completed on 15 November 2022.

10. The Appellant operated both Flat A and Flat B as HMOs, each containing four bedrooms with ensuite showers and/or WCs. The HMOs did not require a licence because they contained fewer than five people, being the threshold for mandatory licensing under the Housing Act 2004 ("the Act") and regulations made thereunder. Bromley does not have an additional licensing scheme which would make smaller HMOs, such as Flats A and B, subject to licensing.

11. Having received a report from the planning department that Flats A and B were being run as unlicensed HMOs, Mr Millward inspected the properties on 9 January 2024. His inspection reports listed numerous defects and deficiencies in the two flats, which were summarised in two letters to the Appellant on 16 January 2024, one in respect of each flat.

12. The complaints about Flat A included lack of usable floor space in the bedsits and shared basement kitchen, and inadequate sized bathroom facilities, poor lighting and narrow stairs down to the kitchen, which lacked a handrail. The complaints about Flat B included lack of usable floor space in the bedsits and shared kitchen, low ceilings, and inadequate functional space for washing facilities and cooking facilities.

13. Mr Millward invited proposals from Mr Kahan to put right the matters complained of. Mr Kahan replied on 12 February 2024 to explain that "when [we] converted the 2 flats into rooms we looked at the LA website and it was clear to us that as there are only 4 bedsits in each flat

it would not require an HMO license, therefore, we thought that we must comply with the national standard of room sizes ONLY, which we have followed correctly & ignored the LA guidance." Mr Kahan apologized for the error and proposed reducing the number of bedsits in each flat from four to three and reconfiguring the rooms, but Mr Millward rejected these proposals because the floor spaces would still be inadequate.

14. On 20 March 2024, Bromley served two prohibition orders on the Appellant, each suspended for six months until 20 September 2024, "to allow sufficient time for the housing hazards to be alleviated or the property vacated and alternative accommodation found for the residents." The Appellant company exercised its right to appeal against the prohibition orders.

15. At the hearing of the appeal, Mr Millward gave evidence about his inspection of the two flats and the hazard assessments he had carried out in accordance with the Operating Guidance for the HHSRS. On behalf of the Appellant, Mr Scott challenged Mr Millward's approach to the assessment of hazards in the flats and his methodology in carrying out those assessments.

16. One issue was the applicability and relevance of Bromley's locally adopted standards for room sizes.

Bromley's adopted standards

17. Bromley's *current* adopted standards for room sizes were introduced in December 2021. Details were provided in both the Appellant's and the Respondent's hearing bundle. For single occupancy bedrooms or bedsits with adequately sized shared kitchen and common rooms, the minimum room size was 7 m². However, where an HMO has no shared common room, the minimum bedroom or bedsit size increases by a further 4 m², making a minimum requirement of 11 m². Shared kitchens for up to five people must be a minimum of 7 m² and shared common rooms must be a minimum of 11 m² for up to five people. Various minimum sizes were given for bathroom, shower and WC facilities, depending on their configuration, for example, 1.2 m² for a WC and wash hand basin, 1.7 m² for a shower only and 2.5 m² for a shower, WC and wash hand basin.

18. The pre-December 2021 adopted standards (again, found in both bundles) allowed for smaller room sizes, for example a single occupancy bedroom could be 6.51 m² in size (rather than 7 m²) if there were adequately sized shared kitchen and common rooms, which could be 5.5 m² and 9 m² in size, respectively (rather than 7 m² and 11 m², post-December 2021); but without those, the bedroom had to be 10 m² in size (rather than 11 m²).

19. By contrast, the pre-December 2021 national standard room size was said to be 6.51 m², but no further details were provided (save that, from the Respondent's statement of reasons opposing the appeal, national standards appear to relate primarily to single occupation residential premises rather than to HMOs).

20. In the case of both pre- and post-December 2021 adopted standards, the minimum standards applied to all HMOs in the borough, defined as a house or flat that is occupied by "three or more persons in two or more households" where one or more amenity, for example the bathroom is shared. While the documents make clear that mandatory licensing applies only to HMOs with five or more residents, the documents contain no exemption from the minimum room standards for smaller, non-licensable HMOs; and both documents make explicit reference to the application of the HHSRS to risk assess any defect or inadequacy found in a property.

21. Mr Millward explained that when the new room size standards were adopted the council was aware of developers who were already converting buildings to the pre-December 2021 standards. As it was felt unfair on those contractors to change the specification mid-construction, the council was able and did exercise discretion to allow conversions to be completed to the old standard rather than comply with the newly adopted standards. In order to do so, the council had to be satisfied that the construction works had commenced pre-December 2021. In the present case, it was not so satisfied.

22. Mr Millward said that any developer visiting the council's website would have been directed to the current adopted standards and would have been left in no doubt that they were applicable to all HMOs in the borough.

23. In his witness statement, it appeared that Mr Millward understood the difference between applying adopted standards for licensable HMOs under Part 2 of the Act, i.e. by way of licence condition, and applying those standards to non-licensable HMOs under Part 1 of the Act, as part of an HHSRS hazard risk assessment. Unfortunately, however, paragraph 4 of his witness statement, which related to licensable HMOs had clearly been copied and pasted as a second paragraph 4 relating to non-licensable HMOs with near-identical wording. This lack of clarity about the difference in approach under Part 1 and Part 2 of the Act may have strengthened the Appellant's view that Mr Millward had adopted an inflexible approach to the mandatory application of adopted standards to non-licensable HMOs.

24. When pressed about the applicability of adopted standards for non-licensable HMOs, Mr Millward stressed that the adopted standards had

been approved by the council but that for a non-licensable HMOs these were indeed enforced through the HHSRS.

Flat A

25. The Respondent's hearing bundle contained copies of Mr Millward's inspection report dated 9 January 2024, scale plans of the flat and three separate hazard assessments under the following hazard profiles: Crowding and Space, Lighting and Falls on Stairs.

26. The defects and deficiencies identified in the hazard assessment for Crowding and Space states that: "The HMO lacks adequate kitchen facilities as the whole of the shared kitchen has a ceiling height below 2.13 m. The two shower rooms off a bedsit, three WCs and two of the four bedsits are undersized."

27. The shared internal kitchen was in the basement. The floor area was measured at approximately 6.8 m² with a ceiling height of 2.04 m. Mr Millward considered this to be undersized because, according to Bromley's adopted standards, the minimum usable floor area for a shared kitchen is 7.0 m² and the minimum ceiling height for usable floor space in the kitchen or habitable room is 2.13 m.

28. In addition, the stairs to the basement kitchen are only 0.7 m wide, with no handrail, as against the minimum width of 1.0 m as required by paragraph 21.30(m) of the Operating Guidance.

29. As for the common room and four bedsits on the ground floor, the measurements are:

Floor	Room	Minimum usable floor area (Bromley adopted standard)	Actual usable floor area in Flat A	Notes
Ground	Front common room	11.0 m²	6.2 m²	
	1. Mid-front Right Bedsit	11.0 m²	7.5 m²	Natural light deficiency
	Shower	1.7 m²	0.6 m²	
	WC	1.2 m²	0.6 m²	
	2. Mid-rear Right Bedsit	11.0 m²	6.7 m²	Natural light deficiency
	Shower	1.7 m²	0.6 m²	

	WC	1.2 m²	0.6 m²	
	3. Rear Right Bedsit	11.0 m²	11.4 m²	
	Shower with WC	2.5 m²	1.3 m²	
	4. Rear Left Bedsit	11.0 m²	11.0 m²	
	Shower with WC	2.5 m²	1.7 m²	

30. As can be seen, the actual usable floor area of two of the bedsits and all of the bathroom facilities is below the adopted standard size. Had the pre-December 2021 adopted standards applied, the minimum room standard of 10 m² would have been applicable, with the same result that two of the bedsits would still have been undersized.

31. When reviewing the defects and deficiencies in Flat A which could contribute to a hazard, Mr Millward scored them all at level 3, i.e. he considered them to be "seriously defective". He then carried out the usual hazard scoring against the likelihood of harms, the spread of potential outcomes and calculating a hazard score, in accordance with the formula set out in the Operating Guidance.

32. For Crowding and Space (which in Flat A covered the small living room area, kitchen area, personal washing areas, sanitary accommodation and bedsits), the national average likelihood of injury arising from a defect or deficiency (taken from research by Warwick University which underpins the whole HHSRS scheme) was 1 in 8000 over the period of one year. On the fixed scale of likelihoods in the Operating Guidance, this translates as 1 in 5600, being the top "likelihood" in the range.

33. Mr Millward, however, considered that the likelihood of harms occurring because the defects and deficiencies that he had identified were in the range of 1 in 42 to 1 in 75, which translates as 1 in 56 on the fixed scale. This is the likelihood figure that fed into his hazard rating calculation. Mr Millward justified this change on the grounds that "This HMO lacks adequate kitchen and bathroom facilities and two of the four bedsits are undersized. This increases the likelihood of a harmful occurrence."

34. Mr Scott for the Appellant said that this was an inadequate justification, and he questioned the choice of likelihood at 1 in 56. Mr Millward explained that this was his expert opinion, based on 20 years' experience as a housing surveyor, having attended two training courses on the operation of the HHSRS and having carried out hundreds of assessments. In his opinion, this was an HMO with undersized bedsits,

a very small living room that could not be used for socialising and where four occupants did not have the luxury of moving around the flat except for the basement kitchen, itself undersized and accessed by a hazardous narrow staircase without a handrail. These were factors that in his assessment increased likelihood of harm occurring to the occupants as a result of the defects and deficiencies in the flat.

35. Mr Millward had applied a 1 in 56 likelihood for all the undersized bedsit rooms, for consistency. The fact that he had also chosen a 1 in 56 likelihood for the other factors, Falls on Stairs and Lighting, was, he said, a matter of coincidence.

36. When looking at potential outcomes, Mr Millward considered that the national Class I and Class II outcomes ("extreme" and "severe" harms) should remain at 10% each (as recommended by the Operating Guidance), but he adjusted the Class III outcome ("serious" harm) from 21.5% to 31.6%. In the written hazard assessment, Mr Millward justified this approach because "Although the likelihood of a harmful occurrence is higher than average, there is nothing to indicate that the spread of harms will vary significantly from the average." However, in oral evidence, Mr Millward explained that he had made a slight change to the Class III harm outcome for the bedsits because he thought there was "a higher risk of serious harm occurring at this property, when taken as a whole."

37. The hazard rating calculation gave a rating score of 2,142 which put the defects and deficiencies under this heading in Hazard Band B, which equates to a Category 1 Hazard.

Flat B

38. In Flat B, there was no shared common room, and the shared kitchen was in the loft conversion on the second floor. Bromley's hearing bundle contained copies of Mr Millward's inspection report dated 9 January 2024, scale plans of Flat B and four separate hazard assessments under the following hazard profiles: Crowding and Space (like Flat A), Flames and Hot Surfaces, Collisions and Entrapments, and Position and Operability of Amenities.

39. As with Flat A, Bromley's minimum usable floor area for a shared kitchen is 7.0 m² and the minimum ceiling height for usable floor space in the kitchen is 2.13 m. Where a room is a loft conversion, any ceiling height below 1.53 m is disregarded as non-usable floor area, and at least 75% of the remaining usable floor area must have a ceiling height of 2.13 m or more.

40. In Flat B, the kitchen in the loft conversion had a floor area of approximately 7.3 m² overall. However, the ceiling height slopes

upward from the front elevation. It is approximately 1.5m high at the front elevation and reaches 2.13 m high approximately 1.7 m from the front elevation. That means only about 2.3 m² (32%) of the 7.3 m² floor area has a ceiling height of 2.13m or more. This is less than the 75% minimum requirement but, perhaps more importantly, most of it is taken up with worktops, so that the space for standing is even less than 2.3 m².

41. As for the four bedsits on the first and second floors, the measurements are:

Floor	Room	Minimum usable floor area (Bromley adopted standard)	Actual usable floor area in Flat B	Notes
First	1. Front Bedsit	11.0 m²	9.9 m²	
	WC	1.2 m²	0.8 m²	
	2. Mid Right Bedsit	11.0 m²	10.1 m²	
	Shower with WC	2.5 m²	1.5 m²	
	3. Rear Bedsit	11.0 m²	8.1 m²	
	WC	1.2 m²	1.0 m²	
Second	4. Rear Bedsit	11.0 m²	8.3 m²	
	Shower with WC	2.5 m²	5.0 m²	

42. As will be seen, the actual usable floor area of each bedsit and most of the bathroom facilities is below the adopted standard size. Had the pre-December 2021 adopted standards applied, the minimum room standard of 10 m² would have been applicable, with the result that only one of the bedsits would have been of adequate size.

43. Under Crowding and Space, the Defects and Deficiencies are summarised as: "The HMO lacks a shared kitchen with adequate usable floor space. Two of the private shower rooms, three of the private WCs and two of the four bedsits are undersized" (though, in fact, the original risk assessment had found all four bedsits undersized).

Method of enforcement

44. In his letters to the Appellant of 16 January 2024, Mr Millward said that "Consideration is now being given to what the most satisfactory

course of action will be for the local authority to address the various housing hazards and non-compliances found at the above. Options under consideration include the service of suspended prohibition orders prohibiting the occupation and use of bedsits within the property and or the occupation and use of the whole property."

45. Although Mr Kahan made proposals to address the defects and inadequacies in the two properties, these proposals were not acceptable to Bromley, because hazards would still remain if the flats were reconfigured as proposed. Because Category 1 and Category 2 hazards were identified in both properties, Mr Millward considered that service of a suspended prohibition order was the most satisfactory course of action.

46. As the Statement of Reasons for each order explains, "The nature of the hazards and associated risk to health and safety make the service of a Hazard Awareness Notice, Improvement Notice, Emergency Remedial Action, an Emergency Prohibition Order, a Demolition Order or declaring a Clearance Order inappropriate, impractical and or disproportional to the risks to health and safety presented by the property."

The Appellant's case

47. The Appellant criticised the method adopted by the council in assessing hazards. It said that Bromley had not provided a compelling evidential basis to conclude that there were any hazards in the properties. The only basis put forward by Bromley was that room sizes within the properties did not meet its current locally adopted standards, and it was unsatisfactory to say that this mere fact led to the conclusion that there were hazards in the properties. The Appellant contended that there were no Category 1 or Category 2 hazards in the properties and there was no basis for making a prohibition order.

48. At the hearing, Mr Scott expanded on this contention, putting forward an argument that Bromley's adopted standards for room sizes had no application to non-licensable HMOs and, by linking a failure to meet those adopted standards with hazards assessed under the HHSRS, was not only a flawed approach, but also an unlawful approach. He said that Mr Millward had made the mistake of treating the adopted standards as mandatory, when in the case of non-licensable HMOs they could be no more than guidance. Licensable HMOs are dealt with under Part 2 of the Act, where licence conditions can mandate compliance with local standards. However, non-licensable HMOs, as here, are dealt with under Part 1 of the Act and are subject to HHSRS assessment. Mr Scott said that Mr Millward's thinking at the time he inspected the properties was that the locally adopted standards were mandatory for both licensable and non-licensable HMOs and that thinking undermined the

credibility of his hazard assessments, irrespective of his experience and training.

49. Mr Scott contended that the council had failed to use the HHSRS Operating Guidance and Enforcement Guidance in coming to the view that hazards existed; and the council's case was purely that adopted standards have not been met. Although the room sizes in Flat A and Flat B mostly did not comply with Bromley's current adopted standards, he submitted that they did comply with pre-December 2021 *national* adopted standards and, later in the Statement of Reasons for the Appeal, the pre-December 2021 adopted standards. It was manifestly unfair that an individual could begin building a property to those earlier standards, only for the specifications to change on completion, which then required the property to be altered at the developer's expense.

50. As to the appropriate enforcement action, Mr Scott put it to Mr Millward in cross examination that, given that the Class III harm outcomes were most relevant and most likely to occur, that fact should have influenced which enforcement action he should have taken. Mr Scott suggested that a different type of enforcement action would have been more appropriate if Mr Millward had properly understood that neither a defect in the property nor a breach of adopted size standards automatically meant there was a hazard in the properties.

51. Mr Scott relied on two cases to support his arguments. The first, *Bristol City Council v Aldford Two LLP* [2011] UKUT 130 (LC) was an appeal against an improvement notice, where the Upper Tribunal gave guidance on First-tier Tribunals re-hearing the merits of using a particular method of enforcement. Mr Scott sought to say that paragraphs 55 and 56 of *Aldford* set out the proper approach to the present appeal and, in the light of those paragraphs, the FTT should not shy away from making its own assessment of the hazard, determining whether there was a Category 1 hazard and considering alternatives to the council's enforcement action.

52. The second case was another FTT decision, *Raad Polus Bihnam v Plymouth City Council* (CHI/00HG/HPO/2021/0001), which Mr Scott said was very similar to the present case. In *Bihnam*, a prohibition order based on small room size was quashed, the FTT having concluded that the only reason an HHSRS assessment had been made was because of (LACORS) guidance as to the minimum size of a bedroom for a single person, a lack of an assessment of health risks in the HHSRS Operating Guidance and insufficient evidence that hazards existed to warrant the Category 1 hazard assessment or actions proposed.

53. Finally, Mr Scott also submitted that the prohibition orders relating to Category 2 hazards, apparently made under section 20 of the Act, were invalid, because section 20 refers to Category 1 hazards. The section 8 reasons for deciding to impose a prohibition order were "entirely deficient" and no reasonable justification had been given for taking a less significant enforcement method. Allied to that, there was no cogent reason why an improvement notice or hazard awareness notice could not have been used if risks were present, for example in relation to the kitchens.

The Tribunal's conclusions

54. The Tribunal agrees with Mr Scott that the mere failure to comply with Bromley's adopted room standards is not determinative of there being hazards in the two properties. However, the Tribunal does not agree that the adopted room standards only apply to licensable HMOs.

55. Bromley's documents are clear that the standards apply to HMOs in the borough, where there are three or more occupants in two or more households. They therefore apply to all HMOs, including non-licensable ones. What is different is that in the case of licensable HMOs the standards are enforceable by way of mandatory licence condition, whereas for non-licensable HMOs non-compliance with the standards is a factor that may be taken into account when assessing hazards by way of an HHSRS assessment under Part 1 of the Act. As Mr Scott accepted, the adopted room standards provide legitimate guidance for the carrying out of such an assessment and they can be an additional reason why conditions in the property are said to be deficient or defective.

56. When Mr Millward carried out the hazard assessments, he considered the post-December 2021 room standards. Although Mr Scott argued that it was unfair on developers if the council departed from the pre-December 2021 standards after construction had started, no evidence was presented to the Tribunal to say when the conversion works at these two properties had commenced. The strong inference was that the works had commenced sometime in early- or mid-2022, and the Tribunal received no evidence from Mr Kahan to say otherwise.

57. Possibly Mr Kahan did not know, because his company only purchased the property in the middle of construction, in June 2022. However, given that final certificates were issued in November 2022, on the balance of probabilities the Tribunal finds that the works commenced in early-or mid-2022.

58. Whatever may be the case, there was nothing to say that this was a case where the council should have exercised discretion to avoid a possible unfairness. Even had the works commenced before December 2021, it

is clear that, in any case, the rooms in the properties did not comply with Bromley's pre-December 2021 size standards. As for national standards at that time , it appears that these primarily related to single occupancy properties and not to HMOs, and so are of little or no relevance.

Flat A

59. Turning to the hazard risk assessment for Flat A, we are satisfied that the defects and deficiencies identified by Mr Millward and scored on the first page of the assessment reflect the relevant matters affecting likelihood and harm outcome, which appear in paragraph 11.20 of the Operating Guidance at page 94.

Crowding and Space

60. Although the risk assessment considers the vulnerable age group is "65 years and over" the Operating Guidance considers (at 11.02) that "There is no specific age group more vulnerable than others". However, those most vulnerable (11.07) "will be those who spend the most time at home, typically the elderly, the very young, the mobility impaired and their carers." Lack of space and overcrowded conditions (11.06) "have been linked to a number of health outcomes, including psychological distress and mental disorders, especially those associated with a lack of privacy and childhood development." As well as hygiene risks from overcrowding, "Deficiencies with space and crowding can increase the risks associated with a number of other hazards. The risk of domestic accidents is greater where there is insufficient space for the occupants. Small kitchens also increase the risk of accidents. Where people and their belongings and furniture are crowded together, it may not be possible to keep circulation space or functional space around appliances clear" (11.10). Crowded conditions can also increase the moisture burden of the dwelling, leading to condensation and giving risk to associated health risk (11.11). "In multi-occupied accommodation, most of these issues may be compounded by sharing of some spaces" (11.12).

61. Although Mr Scott challenged Mr Millward's expert opinion, his was the only expert evidence available and, to that extent, it was uncontradicted. Taking into account all the features of this property leading to crowding and pressure on space, as an expert Tribunal we were not surprised to see that the defects and deficiencies had been scored as "seriously defective". Bearing in mind the harms identified in the Operating Guidance, we would expect such an assessment to lead to an increased likelihood of harms and do not consider that Mr Millward's 1 in 56 is a very high score. The justifications could have been more fulsome, but we agree that the condition of the premises does increase the likelihood of a harmful occurrence.

62. The adopted standards for room sizes apply to this HMO and are standards that Mr Millward could and did legitimately adopt as guidance, when he considered the hazard assessment. As the standards represent best practice in the licensed HMO sector, they are also standards that we would expect to be met by any non-licensable HMO in the borough, given that the likelihood of harms and the spread of harms are likely to be similar. We are therefore satisfied that Hazard Band B is appropriate and that there is a Category 1 hazard in Flat A in respect of Crowding and Space.

Falls on Stairs, etc

63. Even had that not been the case, we would have been satisfied that there was a Category 1 hazard arising from the hazard score in respect of Falls on Stairs, etc. The Operating Guidance itself flags up a potential defect or deficiency where stairs are less than 1.0 m in width and where there are no handrails. As the Operating Guidance identifies (21.09) "Any fall can result in physical injury, such as bruising, fractures, head, brain and spinal injuries and may even be fatal. The nature of injury is dependent on the distance of a fall, and nature of the surface(s) collided with, as well as on the age and fragility of the person." and (21.17) "the lack of any handrail doubles the likelihood of a fall, even if there is a wall to both sides of the stairs".

64. In this property, the risk associated with the narrow stairs must be increased by the use of it by four people, the fact that they will be carrying things down to the kitchen and hot food upstairs from the kitchen (to eat in their rooms or perhaps in the small common room), with all the extra risk of collisions on the stairs and falls, made worse from the lack of a hand rail which is all the more necessary when carrying objects at the same time. In the Tribunal's judgment, these factors justify Mr Millward adjusting the likelihood of harm from 1 in 320 to 1 in 56 and the spread of harm outcomes for each of Classes I, II and III; and the Tribunal agrees that the stairs represent a Category 1 hazard.

Lighting

65. Regarding the hazard caused by the lack of lighting in two of the bedsits, the harms associated with lack of light and outlook are less serious but nonetheless real and listed in section 13 of the Operating Guidance. While this category "covers the threats to physical and mental health associated with inadequate natural and/or artificial light" and it "includes the psychological effect associated with the view from the dwelling through glazing" (13.01), the Operating Guidance accepts that "[t]here is a weak quantitative evidence base" (13.05). Nonetheless, inadequate light can cause depression and psychological

effects and eyestrain from the lack of adequate light and/or artificial light.

66. The lack of outlook might be less significant problem, if the room size was adequate and/or there was an adequately sized common room. However, the Tribunal would not interfere with Mr Millward's assessment that an occupant of either of the two affected bedsits will suffer some psychological harm from living in these conditions. He assessed the hazard in Band F, which makes it a Category 2 hazard. Of itself, that might not be sufficient to justify a prohibition order, but combined with the Category 1 hazards considered above, under Crowding and Space and Falls on Stairs, it adds to a picture of an unsatisfactory property, as a whole.

Flat B

67. Turning to Flat B, for the same reasons that have been discussed in respect of the hazard profile in Flat A, the Tribunal is satisfied with Mr Millward's hazard score and his conclusion that the assessed hazards for Crowding and Space in Flat B fall into Band B, thus constituting a Category 1 hazard.

68. Even if that were not the case, the kitchen on the second floor is wholly inadequate and clearly constitutes a risk to occupants in its current form. The size and configuration of the kitchen engaged four separate hazard profiles from the Operating Guidance: Crowding and Space, Flames and Hot Surfaces, Collisions and Entrapment (much of the ceiling being well under the 1.9 m height standard set out in paragraph 26.18 (k) of the Operating Guidance) and Position and Operability of Amenities.

69. The kitchen had very little space that was usable. The frequency of its use by four tenants would significantly increase the risk of collisions and entrapment, basically banging heads on the ceiling. In addition, as stated in Mr Millward's risk assessment, "The limited space within the shared kitchen increases the risk of an accident associated with the use of kitchen facilities within the space. Accidents associated with inadequate kitchen space include a pan on a cooking hob or a cup on a worktop filled with a hot liquid being knocked over and spilling on the occupier or a guest, someone coming into contact with a hot ring on the hob and or someone coming into contact with a hot open oven door." In oral evidence, Mr Millward expressed the opinion that "The kitchen shouldn't be used, full stop."

70. The Tribunal agrees with this assessment. While the other hazard profiles all resulted in Hazard B assessments, the Flames and Hot Surfaces assessment only resulted in a Hazard Band D. If anything, the Tribunal might have adjusted that assessment to increase it at least a

Hazard Band C, but we did not feel the need to do so given that, overall, the result was a Category 1 hazard in this HMO from the other assessed risks, and when considering the property as a whole.

Summary

71. Having considered the risk assessments in detail, the Tribunal is satisfied not only that Mr Millward has not taken an inflexible approach, but also that his assessments reflect the HHSRS Operating Guidance. While Mr Millward's hazard assessments both reflect and rely upon the locally adopted standards, the Tribunal does not accept that these are the only basis for his risk assessments, or that he has ignored the Operational Guidance for HHSRS assessments, or that his reasons undermine his conclusions that Category 1 and Category 2 hazards exist in the properties.

72. It follows that the Tribunal does not accept the Appellant's argument that there are no hazards in the properties that could justify enforcement action under the Act.

73. In reaching this conclusion, the Tribunal has had regard to the *Bristol City Council v Aldford* case, even though the Respondent pointed out that it was a case in relation to a self-contained flat and not an HMO. As invited by Mr Scott in the final paragraph of the Applicant's Statement of Reasons for the Appeal, the Tribunal has applied the test to "determine whether or not the evidence showed that there was a category 1 hazard, examining the council's assessment and the reasons for it and reaching a conclusion in the light of this …" It is satisfied with the council's assessment and reasons for it and, therefore, that there are Category 1 and Category 2 hazards in the properties.

74. The Tribunal did not derive any benefit from the *Raad Polus Bihnam v Plymouth* decision, which was a non-binding decision of another First-tier Tribunal based on its own facts. Although it concerned a prohibition order based on room size that was quashed, that case was also in relation to a self-contained flat – occupied by a single person – and not an HMO occupied by several people, where overcrowding, the hazards caused by overcrowding and other deficiencies constitute a real risk of harm.

The chosen method of enforcement

75. By section 8 of the Act, a local authority must give reasons for the kind of enforcement action that it decides to take in relation to any hazards assessed in a property. The options include, in order of increasing severity: a hazard awareness notice (not severe at all), an improvement notice, a prohibition order and a demolition order.

76. In the case of Flats A and B, Bromley decided to issue prohibition orders that were suspended for a period of six months. The section 8 statement of reasons for the decision to take this kind of enforcement action are concise but indicate clearly enough that the nature of the hazards that had been assessed and the associated risk to health and safety made other methods of enforcement inappropriate, impractical and/or disproportionate to the risks to health and safety presented by the properties.

77. Although more detail might have been given in the section 8 reasons, the Tribunal has reached the same conclusion that a prohibition order was the appropriate method of enforcement. The properties were clearly unsuitable for occupation as HMOs at the time of construction, and they remain so today. Substantial alteration needs to be carried out before they can be occupied with an acceptable level of risk to occupants; and it is hard to imagine that work being capable of being carried out with the occupants living in the properties.

78. Regarding other remedial measures that could have been used, the Appellant stated simply that "clearly a Prohibition Order is one of the most draconian enforcement methods available. The section 8 notice is very vague and provides no cogent reason why an improvement notice or hazard awareness notice could not have been used if there are risks present, e.g. the kitchen. From the description provided by LBB [Bromley], the issues they have with the Properties can be remedied and do not warrant such draconian methods."

79. Having considered the nature of the hazards identified in the properties, the Tribunal does not consider that either a hazard awareness notice or an improvement notice would have been a sufficient response by Bromley. A hazard awareness notice would not have guaranteed the removal of the hazards and would have left the occupants of these HMOs at significant risk of harm from overcrowding and other deficiencies. An improvement notice would have required very significant input from Bromley to specify substantial alterations to the properties to eliminate the hazards, that would likely have been subject to appeal in any event.

80. Therefore, a prohibition order is the most appropriate enforcement measure because it reflects the need to stop these HMOs being used with the attendant risk of harm to occupants, leaving it to the Appellant to come up with an appropriate remedy. We therefore agree with Mr Millward that other measures were "inappropriate, impractical and or disproportional to the risks to health and safety presented by the property."

81. The chosen method of enforcement was suspended to give the Appellant time to make proposals to eliminate the hazards, and this

was a legitimate approach to the matter, within the discretion of the Council. That Mr Kahan made proposals in advance to reduce the number of bedsits from four to three in each flat is commendable, but the resulting changes still did not satisfy Bromley's adopted room standards (though apparently they would have resolved issues with the inadequate kitchens) and it is not surprising that Bromley rejected the proposals.

82. Lastly, the Tribunal does not accept the Appellant's alternative argument that prohibition orders in respect of Category 2 hazards are invalid because they had been made under section 20 of the Act. It is correct that section 20 gives a local authority power to make a prohibition order in respect of Category 1 hazards and section 21 contains the power to make a prohibition order relating to Category 2 hazards. However, as Mr Millward pointed out, by section 21(5) of the Act "a prohibition order under this section may be combined in one document with an order under section 20 where they impose prohibitions on the use of the same premises or on the use of premises in the same building containing one or more flats."

Conclusion

83. The original directions did not make provision for the Tribunal to inspect the property. At the end of the hearing the Tribunal raised the possibility that it may need an inspection and Mr Kahan indicated that, if it were necessary, he could arrange it easily. There were no photographs of the properties in the bundle, and, to that extent, the Tribunal was handicapped slightly by not having an inspection. Although Mr Kahan said at the very end of the hearing that the Tribunal should inspect because he considered the risks were exaggerated, having reflected on the documents that were available, especially the plans, precise measurements, inspection reports and risk assessments, Tribunal considers that it would be inappropriate to inspect at this stage.

84. The Tribunal has looked at each property as a whole. There is either no communal space or no adequately sized communal space; the kitchens are seriously deficient either due to their size or due to their size, position and access; occupants will be need to eat in their bedrooms, which will increase condensation and mould; a kitchen that is shared with up to four people will necessarily increase the risk of accidents and harm. It is therefore no surprise that the Tribunal confirms the very careful risk assessments that have been carried out by Mr Millward.

85. The Tribunal is quite satisfied that both flats are wholly unsuitable for living accommodation as HMOs, as they are currently arranged.

86. It follows from all the above that the Tribunal is satisfied with the assessment of Category 1 and Category 2 hazards for each flat and, therefore, agrees with the Bromley's decision on 20 March 2024 to serve a suspended prohibition order in respect of each.

87. The Tribunal therefore confirms the prohibition orders and varies their suspension by a further six months to 20 June 2025 to give the Appellant time to resolve the defects and deficiencies to Bromley's satisfaction.

Name: Judge Powell **Date: 18 December 2024**

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the Tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

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 for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the Tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).