



FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference : BIR/00CW/HPO/2024/0002

Property : Flat 2, 184 Newhampton Road East,
Wolverhampton, West Midlands
WV1 4PQ

Applicant : Mr H S Chana

Respondent : Wolverhampton City 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 : 16 December 2024
Centre City Tower, 5 – 7 Hill Street,
Birmingham B5 4UU

Date of Decision : 27 January 2025

DECISION

Decision

1. The Tribunal orders that the Emergency Prohibition Order be revoked with effect from the date it was made, being 23 April 2024, and that any associated demand for payment of a charge that may have been issued relating to the same be quashed.
2. The Tribunal orders, under Rule 13(2) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013, that Wolverhampton City Council reimburse Mr Hardip Singh Chana the whole of the tribunal application fee and the hearing fee, being a total sum of £330.

Reasons for Decision

Introduction

3. On 20 May 2024, the First-tier Tribunal (Property Chamber) received an application from Mr Hardip Singh Chana ('the Applicant') for an appeal under section 45(2) of the Housing Act 2004 ('the Act').
4. The appeal related to an Emergency Prohibition Order (EPO) dated 23 April 2024 ('the Order'), served upon him by Wolverhampton City Council ('the Respondent') relating to the property known as Flat 2, 184 Newhampton Road East, Wolverhampton, West Midlands WV1 4PQ ('the Property').
5. The Applicant is the joint freeholder, together with Mr Satnam Singh Chana (on whom a copy of the Order was also served), of 184 Newhampton Road East ('the Building') of which the Property forms part.
6. The Order detailed, in Schedule 1, various defects at the Property and, in Schedule 2, the remedial action that needed to be carried out for the Order to be revoked.
7. Schedule 1 referred to six hazards, all of which were described as being of "*imminent risk*". These hazards were in respect of Crowding and Space (Item 1), Excess cold (Item 2), Damp and mould growth (Item 3), Collision and Entrapment (Item 4), Falling between Levels (Item 5) and Position and Operability of Amenities etc (Item 6). The Respondent served, with the Order, a Statement of Reasons as to why the decision to take enforcement action had been made.
8. The Tribunal received a bundle of documents from both parties and an inspection was arranged for 16 December 2024, with an oral hearing thereafter at the tribunal's hearing rooms in Birmingham.
9. On the day of the hearing, the Tribunal was provided with a trial bundle from the Respondent ('the Trial Bundle'), together with a further statement from the Respondent and a costs schedule which had been submitted to the tribunal's office on 12 December 2024.

The Law

10. The Act introduced a new system for the assessment of housing conditions and for the enforcement of housing standards.
11. 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.
12. 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'.
13. 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 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.
14. 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.
15. 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)."

16. 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."*

17. 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."*

18. 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."

Background

19. The background to the application was not in dispute.
20. On 5 April 2024, the Council received a complaint in relation to the Property regarding damp and a lack of ventilation, together with inaction by the landlord to rectify the same. The agents' details were given as those of the landlord.
21. Mr Nadeem Razak, a Senior Environmental Health Officer employed by the Respondent, was allocated the case and, on 11 April 2024, he served a section 239 inspection notice to the address provided. On 15 April 2024, Mr Razak received an email from the agents confirming that they provided a let-only service but had notified the landlord of the inspection.
22. An inspection was carried out by Mr Razak on 15 April 2024 in the presence of the Applicant and occupiers of the Property - the tenant, her husband and their young child.

23. The occupiers advised Mr Razak that they slept in the kitchen/living area as there was excessive mould in the bedroom. They showed Mr Razak photographs of the bedroom taken by them on 12 April 2024.
24. Mr Razak found that the Property had no fixed heating in the bedroom or bathroom and that the room temperature in the bedroom was 13.3°C, in the kitchen/lounge area was 16.5°C and in the bathroom was 14.3°C. He was advised by the Applicant that there had previously been fixed heating, however, the tenants had removed the same so that they could obtain a council house. The occupants denied this was the case. Mr Razak did not observe any brackets, wiring or pipework which would indicate fixed heating had ever been installed in the bedroom and bathroom.
25. Mr Razak noted that there were two oil-filled plug-in heaters with socket timers at the Property (which the Applicant confirmed he had provided), a fixed storage heater in the kitchen/lounge (which he was advised by the occupiers did not work) and two further electric plug-in convection heaters (which the occupiers advised that they had purchased themselves).
26. Mr Razak measured the bedroom as being a size of 7.47 m². He noted that the bedroom had one single glazed, sash window and a UPVC double glazed window which was cracked; that the kitchen/lounge sash window had single-glazing and that none of the opening lights to the sash windows at the Property (which were at 609mm and 650mm over the floor level) had restrictors.
27. Mr Razak also noticed that the extractor fan in the bathroom was not working and that there was no extractor fan in the kitchen/lounge area.
28. The Applicant confirmed that he had attended the Property after being notified of the inspection and had cleaned away any mould. After the inspection, the Applicant emailed Mr Razak with a list of other work he intended to carry out urgently.
29. Mr Razak completed a HHSRS assessment following the inspection, which revealed two category 1 hazards - Excess cold and Crowding and Space, and four category 2 hazards - Damp and mould growth, Collision and Entrapment, Falling between Levels and Position and Operability of Amenities.
30. As the section 239 notice had not been served on the owners, Mr Razak served a further section 239 notice on 16 April 2024 and a second inspection was carried out on 22 April 2024, which Mr Satnam Singh Chana attended. Mr Razak noted that the condition of the Property remained the same and he completed a further HHSRS assessment following the inspection which identified the same hazards as his first assessment.
31. On 23 April 2024, Mr Razak issued the Order which was served on the Applicant and joint owner. [A copy of the Order is annexed to this decision]

Inspection

32. The Tribunal inspected the Property on 16 December 2024 in the presence of the Applicant and, on behalf of the Respondent, Mr Razak and Miss Kerry Woollett (a

solicitor). The Property was empty at the time of the inspection, the previous occupiers having vacated the same.

33. The Building is located on the corner of Newhampton Road East and Walpole Street in Wolverhampton. It comprises, on the ground floor, commercial premises and one residential flat (Flat 1), with two further residential flats (the Property and Flat 3) located on the first floor. The Building is brick-built and fully rendered, with a pitched, tiled roof. The Property is located at the rear of the Building with external walls to two elevations.
34. The two first floor flats are accessed via an internal staircase from the ground floor of the Building, leading to a small hallway on the first floor. The front door of the Property leads directly into an open plan kitchen/lounge area. Both the bathroom (which contained a washbasin, toilet and bath with shower over the same) and bedroom are accessed from the kitchen/lounge area.
35. There was a small UPVC window in the bathroom, a large timber sash window in the kitchen/lounge and two windows in the bedroom, one horizontal UPVC window and one large timber sash window. All windows were double-glazed and fitted with restrictors. None of the windows appeared to have been newly installed, although the Applicant confirmed that the restrictors had been added since the Respondent's inspection.
36. The Tribunal measured the depth of the external facing walls (which were all internally surfaced in plasterboard) from both bedroom windows and the window in the kitchen/lounge. The measurements recorded were as follows:
 - Bedroom UPVC window - 350mm,
 - Bedroom sash window - 375mm
 - Kitchen/lounge sash window - 380mm
37. All three rooms contained programmable convector heaters attached to the walls. The kitchen units appeared to be of a fair standard and there was a working extractor hood above the cooker hob in the kitchen. The extractor fan in the bathroom was also working and the shower pull cord was at a suitable height.
38. The Property appeared to have been recently decorated and was of a reasonable standard of accommodation with no mould evident.

Hearing

39. Following the inspection, a public hearing was held at one of the tribunal's hearing rooms at Centre City Tower in Birmingham. The Applicant attended and represented himself. Mr Razak attended on behalf of the Respondent and the Respondent was represented by Miss Woollett.
40. Although the Tribunal had only received sight of the Respondent's further statement and Trial Bundle at the hearing, as Miss Woollett confirmed that most of the information contained in the same was a repetition of that already submitted, and as the Applicant had confirmed that he had received a copy of the documentation on 12 December 2024, the Tribunal allowed the Respondent to rely on the same.

41. As no costs application had been made to the Tribunal by the Respondent, Miss Woollett confirmed that the costs schedule submitted by the Respondent could be disregarded.

Submissions

The Applicant's submissions

42. The Applicant confirmed that he had been a landlord for over 20 years and submitted that he had always had good relationships with his tenants, providing them quality accommodation.
43. He stated that the Property had been let to Ms Nawida, as the sole tenant and occupant of the flat, through Easymove Sales & Lettings on 17 May 2022. He stated that the tenancy had initially been for a fixed term of six months and continued as a periodical tenancy thereafter, with the tenant being liable for payment of all utilities under the agreement. The Applicant accepted that the Property was only suitable for occupation by one person.
44. The Applicant disputed that any complaint had ever been made to him regarding any mould at the Property and contested a number of observations that had been made by Mr Razak during the initial inspection.
45. The Applicant stated that the Property did have wall mounted storage heaters at the commencement of the tenancy, which was evidenced in the energy performance certificate ('the EPC') that had been issued for the Property on 13 May 2020. He stated that these were also detailed on the Electrical Installation Condition Report dated 7 May 2023 ('the EICR') which had been issued for the Property during the tenancy. The Applicant submitted that Mr Razak had failed to notice the metal panel backing and spur for the storage heater that had previously been in the bedroom and that, had he been asked to, he would have pointed these out to Mr Razak, together with the fuse board where each heater had a breaker.
46. The Applicant submitted that Mr Razak had also failed to check whether the wall mounted heater in the kitchen/lounge had been working on the day of the inspection, simply choosing to rely upon the statement given by the occupiers that it was not working instead.
47. The Applicant stated that he had informed Mr Razak, and the Respondent in correspondence following the inspection, that he believed the other heaters had been removed by the occupiers as they wanted to be rehoused by the local authority. He further submitted that he was only made aware that the heaters had been removed when he visited the Property after being notified of the inspection.
48. The Applicant stated that when he visited the Property he cleaned all of the walls down, to remove any mould, and provided the occupants with oil filled radiators as an interim measure.
49. As the Applicant had washed down the walls on the weekend prior to the inspection, he disputed that the moisture measurements recorded by Mr Razak were correct, as

he contended the walls would still have been damp at that time. In addition, he queried whether the measuring equipment used in recording the various readings taken on the day had been calibrated prior to the inspection.

50. With regard to the windows, the Applicant confirmed that all of the windows were double glazed and was surprised that Mr Razak had failed to record the same correctly, despite inspecting the Property twice. The Applicant stated that this point was also raised by him in his correspondence with the Respondent following the inspection.
51. In relation to the specification of the walls, the Applicant disputed that the walls were simply solid brick walls and referred to the 2007 planning documents for the conversion of the flats included within the Trial Bundle. He submitted that the external walls had been upgraded with thermally insulated plasterboard as suggested in those documents. Again, the Applicant referred to his reporting of this to the Respondent following the inspection.
52. Based on the above, the Applicant contended that the Order should not have been issued due to the errors in the inspection, as well as the actions of the occupants in creating the excess cold, damp and overcrowding at the Property.
53. Following the hearing, the Applicant provided a copy of the EPC and EICR to the Tribunal at its request.

The Respondent's submissions

54. Miss Woollett contended that, although the Applicant had raised a number of issues in his application, the appeal should be limited to the points concerning the glazing and insulation at the Property. She contended that neither the cause of a hazard nor the failure of the Applicant to be aware of the same, were relevant considerations under Part 1 of the Act.
55. As the Respondent had found that category 1 hazards existed, Miss Woollett stated that the local authority were required to take one of the courses of action open to them and that an EPO was considered to be the most appropriate course of action.
56. Mr Razak confirmed that, despite the Order referring to each of the six hazards found at the Property as constituting an "*imminent risk*", that only the first two items, Crowding and Space and Excess cold, were calculated as category 1 hazards. With regard to the other hazards, he accepted that these were low scoring category 2 hazards. Mr Razak also accepted that the Statement of Reasons had failed to properly explain which of the hazards had been assessed as category 1 hazards and why the Respondent had decided to make an EPO.
57. At the hearing, Mr Razak explained that it was a combination of the two category 1 hazards together which resulted in him assessing that there was an imminent risk of serious harm to the health or safety of the occupiers and that an EPO was the appropriate course of action. He also referred to taking into account the vulnerability of the occupiers – Ms Nawida was pregnant, English was neither her

nor her husband's first language (which might have been a barrier to them accessing help) and that their child was only a few months old.

58. In relation to Crowding and Space, Mr Razak noted that Ms Nawida had previously been issued with a section 21 notice in March 2023 and submitted that the Applicant could have taken action to reduce the overcrowding as soon as he had been made aware of the number of occupiers at the Property. Mr Razak accepted that, as the Property was now vacant, this hazard no longer existed but confirmed that it was still only suitable for one occupation by one person.
59. When calculating the score for Excess cold, Mr Razak confirmed that he was not sure as to the exact structure of the walls but that no evidence had been provided by the Applicant that the walls had been insulated. He stated that he had based his assumptions on the age of the Property and construction methods at the time, as well as the very low temperatures he had recorded during the inspection, which he stated would have been unusual had the walls been insulated.
60. The Respondent provided calibration certificates to indicate that it was unlikely that there would have been any significant inaccuracies in the temperature recordings taken but Mr Razak accepted that the photographs showed that the bedroom window had been open when he had been measuring the temperature and that this could have influenced the same. He also accepted that the occupiers had been provided with oil-filled plug-in heaters by the Applicants and that all of the windows had, in fact, been double glazed, not single glazed as noted in his report.
61. Mr Razak confirmed that had he re-calculated the scores on the morning of the hearing, due to the double-glazed windows and fixed heating, the Property would not have been assessed as being a category 1 hazard now.
62. Miss Woollett noted that glazing was only a recommendation in the Order and that the evidence indicated that the walls were made of solid brick. Accordingly, Miss Woollett submitted that the appeal should be dismissed or, if the Tribunal found otherwise on those two points, the Order simply be varied to reflect the Tribunal's findings.

The Tribunal's Deliberations and Determinations

63. 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.

Deliberations

64. 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.

65. 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 can, however, take into account when making its determination matters of which the Respondent had been unaware at the time of making the Order.
66. Based on the evidence submitted, together with its inspection of the Property, the Tribunal noted that there had been a number of errors in Mr Razak's assessment of the hazards that were present.
67. Firstly, it was quite clear that all of the windows at the Property were double glazed and that this had been the case at the time both inspections had been carried out by Mr Razak. Mr Razak had also failed to check to see whether the storage heater in the kitchen/lounge area was working and had measured the internal temperature of the Property without closing the windows. In addition, having measured the depth of the external walls, the Tribunal considered that it should have been evident to Mr Razak that some insulation had been installed to them, most likely by the provision of insulated plasterboards.
68. The Tribunal also found that, based on the information given in the EPC and EICR, that the Property had, at some time in the recent past and during Ms Nawida's tenancy, benefited from heating through electric storage heaters.
69. The Applicant had been adamant that the occupiers had removed the fixed heating and, although Miss Woollett submitted that this was not something which the Respondent could take into account under Part 1 of the Act, the Operating Guidance states (at paragraph 2.33) that the HHSRS is "*concerned only with those deficiencies that can be attributable solely or partly to the design, construction and/or maintenance of the dwelling*". Deficiencies solely attributable to the behaviour of the occupants, should therefore be disregarded. Accordingly, if the occupiers had removed the fixed heating this should not have been included in any initial assessment of the hazards at the Property.
70. Based on the evidence before it – and in particular noting that there had been fixed heating at the beginning of the tenancy, that the tenant was responsible for the utilities at the Property (so the removal of any fixed heating would have been of no clear benefit to the Applicant) and that the Applicant had consistently denied removing the same and submitted he only became aware of this on his attendance at the Property the weekend prior to the inspection – the Tribunal found that it was more likely than not that the fixed heating had been removed by the occupiers.
71. Having taken into account all of the above, the Tribunal found that a category 1 hazard for Excess cold did not exist at the Property.
72. In relation to the category 1 hazard for Crowding and Space, although the Tribunal accepted that the Applicant had only let the property to Ms Nawida, when assessing this hazard, current occupation is taken into account. The Tribunal found that the measurements of the rooms, as detailed in the Order, appeared fairly accurate and

that the Property was severely overcrowded at the time of the Respondent's inspection.

73. It was unclear as to when the Applicant exactly became aware that the Property was being occupied by more than one person but as he appeared to have been aware that Ms Nawida was complaining that the Property was too small, the Tribunal found it was prior to the notification of the inspection.
74. The Tribunal accepted that a category 1 hazard was likely to have existed for Crowding and Space.
75. In relation to the other hazards referred to in the Order, the Tribunal found that these were all low scoring category 2 hazards, as agreed by Mr Razak at the hearing, and that, despite the wording in the Order, that they posed no imminent risk of harm.
76. 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.
77. In considering that question, the Tribunal had to decide whether the category 1 hazard identified involved an "*imminent risk of serious harm to the health and safety*" of the occupiers of both the Property (and any other premises).
78. 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 to 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."

79. 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.”

80. The Tribunal noted that the three occupiers had all been residing at the Property for several months without any evidence that they had come to any *“serious harm”*. The Respondent had also failed to show why the risk of any harm was *“imminent”* i.e. would be suffered in *“the near future”*, as the decision of the Upper Tribunal in *Bolton* made clear the word *“imminent”* implied.
81. Although Mr Razak had referred to the potential vulnerability of the occupiers, and to English not being their first language as being a potential factor, Ms Nawaz had, independently of any assistance from the local authority or other third-party organization, made a complaint to the Respondent regarding the alleged hazards at the Property.
82. In addition, although the Applicant had stated that he had not previously received any complaints regarding damp at the Property (with no evidence provided to the Tribunal that this was not the case) and that the fixed heating had been removed by the occupants, he had attended the Property the weekend prior to the inspection and cleaned down the walls, removing any mould, and supplied the occupants with radiators as an interim method of extra heating.
83. As such, even if the Tribunal had found that a category 1 hazard for Excess cold had existed, which it did not, the Tribunal would still not have found that the hazards identified involved an *“imminent risk of serious harm to the health and safety”* of the occupiers of the Property.

Determination on EPO

84. Although the Tribunal found that there was potentially one category 1 hazard at the Property for Crowding and Space, the Tribunal found there was insufficient evidence to indicate why this hazard 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. Consequently, the Tribunal found that the Respondent should not have made an EPO.
85. Accordingly, the Tribunal determined that the Order should be revoked from the date it was made and that any associated charge for expenses that may have been issued by the Respondent relating to the same be quashed.

Order under Rule 13

86. The Tribunal can, on its own initiative, under Rule 13(2) *“make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party...”*. In this matter, the Applicant had paid an application fee of £110 and a hearing fee of £220.

87. Having found that the Respondent had made some serious errors in their assessment of the hazards, which had been brought to their attention prior to the hearing by the Applicant, and as the Tribunal has found that the Respondent should not have made an EPO, the Tribunal finds it appropriate to make an order under Rule 13(2) requiring the Respondent to reimburse to the Applicant both the application fee and the hearing fee.

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

24/284/HASEPO

HOUSING ACT 2004
Section 43

CITY OF
WOLVERHAMPTON
COUNCIL

Notice of emergency prohibition order

To Hardip Chana
Of 120 Wergs Road, Wolverhampton, West Midlands, WV6 8TJ

Wolverhampton City Council ("the Authority") **GIVE NOTICE** that they are satisfied that category 1 hazard exists on residential premises namely:-

Flat 2, 184 Newhampton Road East, Wolverhampton, West Midlands, WV1 4PQ

The Authority 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 that no management order is in force under Chapter 1 or 2 of Part 4 of the Housing Act 2004 ("the Act").

The Authority therefore make this emergency prohibition order under Section 43 of the Act and specify the remedial action which the Authority consider would, if taken in relation to the hazard, result in their revoking the order under Section 25 (as applied by Section 54(5)). Details of the Category 1 hazard are contained in **Schedule 1**. The emergency prohibition takes immediate effect imposing the following, prohibitions namely:-

Use of the dwelling known as Flat 2, 184 Newhampton Road East, Wolverhampton, West Midlands, WV1 4PQ for any kind of residential occupation is prohibited.

If the remedial action specified in **Schedule 2** to this Order is carried out in relation to the hazard, the Council will revoke the emergency prohibition order.

A person commits an offence if, knowing that an emergency prohibition order has become operative in relation to any specified premises, he uses the premises in contravention of the order, or permits the premises to be so used. A person who commits an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale and to a further fine not exceeding £20 for every day or part of a day on which he so uses the premises or permits them to be so used after conviction.

The person on whom an emergency prohibition order is made may appeal to a residential property tribunal to confirm or vary the emergency prohibition order or make an order revoking it as from a date specified in that order, within the period of 28 days beginning with the date specified in the emergency prohibition order as the date on which the order was made.

Dated: 23/04/2024

Signed *N Razak*

Designation Senior Environmental Health Officer --

Delete words in square brackets which do not apply

† Insert title of proper officer

The officer appointed for this purpose

Meaning of “category 1 hazard” and “category 2 hazard”

“category 1 hazard” means a hazard of a prescribed description which falls within a prescribed band as a result of achieving, under a prescribed method for calculating the seriousness of hazards of that description, a numerical score of or above a prescribed amount;

“category 2 hazard” means a hazard of a prescribed description which falls within a prescribed band as a result of achieving, under a prescribed method for calculating the seriousness of hazards of that description, a numerical score below the minimum amount prescribed for a category 1 hazard of that description; and

“hazard” means any risk of harm to the health or safety or an actual or potential occupier of a dwelling or HMO which arises from a deficiency in the dwelling or HMO or in any building or land in the vicinity (whether the deficiency arises as a result of the construction of any building, an absence of maintenance or repair, or otherwise).

“prescribed” means prescribed by regulations made by the appropriate national authority (see section 261(1)); and

“prescribed band” means a band so prescribed for a category 1 hazard or a category 2 hazard, as the case may be.

Right of Appeal (under Section 45 of the Housing Act 2004)

If you do not agree with this notice you may appeal against it to the First-tier Tribunal (Property Chamber), but you must do this within 28 days from the date the notice was made.

These notes are intended as general information to the recipient(s) of this as a summary of their rights of appeal against the notice. The notes are not intended to be definitive and any person(s) considering an appeal are advised to seek independent legal advice and/or refer to the full version of the Housing Act 2004. Further advice may be obtained from Residential property: Midlands region, rpmidland@hmcts.gsi.gov.uk

HM Courts & Tribunals Service
First-tier Tribunal (Property Chamber)
Residential Property
15th Floor
Centre City Tower
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Appeals relating to emergency measures (Section 45)

- (1) A person on whom a notice under section 41 has been served in connection with the taking of emergency remedial action under section 40 may appeal to a First-tier Tribunal (Property Chamber), against the decision of the local housing authority to take that action.
- (2) A relevant person may appeal to a First-tier Tribunal (Property Chamber) against an emergency prohibition order.
- (3) An appeal under subsection (1) or (2) must be made within the period of 28 days beginning with –
 - (a) the date specified in the notice under section 41 as the date when the emergency remedial action was (or was to be) started, or
 - (b) the date specified in the emergency prohibition order as the date on which the order was made.
 as the case may be.
- (4) A First-tier Tribunal (Property Chamber) may allow an appeal to be made to it after the end of that period if it is satisfied that there is a good reason for the failure to appeal before the end of that period (and for any delay since then in applying for permission to appeal out of time).
- (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.
- (6) The tribunal may -
 - (a) in the case of an appeal under subsection (1), confirm, reverse or vary the decision of the authority;
 - (b) in the case of an appeal under subsection (2), confirm or vary the emergency prohibition order or make an order revoking it as from the date specified in that order.

- (7) Paragraph 16 of Schedule 2 applies for the purpose of identifying who is a relevant person for the purposes of subsection (2) in relation to an emergency prohibition order as it applies for the purpose of identifying who is a relevant person for the purposes of Part 3 of that Schedule in relation to a prohibition order.

Offence of failing to comply with prohibition order etc. (Section 32)

- (1) A person commits an offence if, knowing that a prohibition order has become operative in relation to any specified premises, he -
 - (a) uses the premises in contravention of the order, or
 - (b) permits the premises to be so used. .
- (2) A person who commits an offence under subsection (1) is liable on summary conviction -
 - (a) to a fine not exceeding level 5 on the standard scale, and
 - (b) to a further fine not exceeding £20 for every day or part of a day on which he so uses the premises, or permits them to be so used after conviction.
- (3) In proceedings against a person for an offence under subsection (1) it is a defence that he had a reasonable excuse for using the premises, or (as the case may be) permitting them to be used, in contravention of the order.

Recovery of possession of premises in order to comply with order (Section 33)

Nothing in -

- (a) the Rent Act 1977 (c.42) or the Rent (Agriculture) Act 1976 (c.80), or
- (b) Part 1 of the Housing Act 1988 (c.50)

Prevents possession being obtained by the owner of any specified premises in relation to which a prohibition order is operative if possession of the premises is necessary for the purpose of complying with the order.

Effect of improvement notices and prohibition orders as local land charges (Section 37)

- (1) An improvement notice or a prohibition order under this Chapter is a local land charge if subsection (2), (3) or (4) applies.
- (2) This subsection applies if the notice or order has become operative.
- (3) This subsection applies if –
 - (a) the notice or order is suspended under section 14 or 23, and
 - (b) the period for appealing against it under Part 3 of Schedule 1 or 2 has expired without an appeal having been brought.
- (4) This subsection applies if -
 - (a) the notice or order is suspended under section 14 or 23.
 - (b) an appeal has been brought against it under Part 3 of Schedule 1 or 2, and
 - (c) were it not suspended -
 - (i) the notice would have become operative under section 15(5) by virtue of paragraph 19(2) of Schedule 1 (improvement notices: confirmation on appeal or expiry of period for further appeal), or
 - (ii) the order would have become operative under section 24(5) by virtue of paragraph 14(2) of Schedule 2 (prohibition orders: confirmation on appeal or expiry of period for further appeal).

Advice

If you do not understand this notice or wish to know more about it, you should contact the Local Authority. If you want independent advice about your rights and obligations, you should go to a Citizens Advice Bureau, Housing Aid Centre, Law Centre or a solicitor. You may be able to obtain help with all or part of the cost of legal advice from a solicitor under the Legal Aid Scheme. If you do not know whether you could apply for Legal Aid you can see a solicitor who may be prepared to give you half-an-hour of legal advice for a small fee. If you want to know more about the works the Local Authority require you to do, you may wish to consult a surveyor.

Schedule 1.1

In the opinion of the Council, the premises have the following hazard which is of imminent risk:

Nature of the hazard: Crowding and Space

The deficiencies giving rise to the hazard

The property is a one bedroom flat with an open plan kitchen / living room and one bathroom.

The bedroom is 7.12sqm.

The lounge is 13.17sqm.

The property is occupied by a couple and a baby and a further baby is expected.

The property is severely overcrowded.

Schedule 1.2

In the opinion of the Council, the premises have the following hazard which is of imminent risk:

Nature of the hazard: Excess Cold

The deficiencies giving rise to the hazard

There is no fixed heating in the bedroom and bathroom.

The bedroom is thermally inefficient with 2 exterior solid brick walls.

Bedroom has single glazed sash window.

The living room has a single glazed sash window which is cracked.

Schedule 1.3

In the opinion of the Council, the premises have the following hazard which is of imminent risk:

Nature of the hazard: Damp and mould

The deficiencies giving rise to the hazard

Presence of mould in the living room.

The bathroom extractor fan does not work.

There is no extractor fan in the kitchen to remove excess moisture.

Silicone sealant around the bath and wash hand basin consist of mould.

Schedule 1.4

In the opinion of the Council, the premises have the following hazard which is of imminent risk:

Nature of the hazard: Collision and Entrapment

The deficiencies giving rise to the hazard

The bedroom UPVC window is cracked.

Schedule 1.5

In the opinion of the Council, the premises have the following hazard which is of imminent risk:

Nature of the hazard: Falls between levels

The deficiencies giving rise to the hazard

The living room sash window has a bottom opening with a sill height of 65cm. there is no window restrictor fitted.

The bedroom sash window has a bottom opening with a sill height of 60.9cm. there is no window restrictor fitted.

Schedule 1.6

In the opinion of the Council, the premises have the following hazard which is of imminent risk:

Nature of the hazard: Position and Operability of Amenities etc

The deficiencies giving rise to the hazard

The electric shower pull cord is too high and cannot be reached.

Schedule 2.1

In the opinion of the Council, the following works if carried out in relation to the hazard, will result in the Order

Nature of the remedial action

The property shall only be occupied by one person.

Schedule 2.2

In the opinion of the Council, the following works if carried out in relation to the hazard, will result in the Order

Nature of the remedial action

Provide and install fixed heating throughout the property including the bedroom, bathroom, and open plan living room. The heating output needs to be sufficient to heat all areas of the property and must include thermostatic valves on the heaters along with a separate room thermostat. A central heating system or electrical heaters may be installed.

Employ the services of an insulation specialist to carry out solid wall insulation to one of the exterior walls in the bedroom. In order to achieve minimum improvement, PIR (polyisocyanurate) board of a thickness of 75mm must be used. This can be installed externally or internally.

Replace the cracked glass pane in the living room window.

Consider upgrading the bedroom and living room sash windows to energy efficient UPVC windows.

Schedule 2.3

In the opinion of the Council, the following works if carried out in relation to the hazard, will result in the Order

Nature of the remedial action

Instruct a specialist, competent and experienced contractor to carry out a thorough removal of all mould from the property.

Install an extractor fan to the bathroom with a fan which has a 24/7 constant trickle, humidistat and boost features operated independently from light switch.

Install an extractor fan in the kitchen ensuring it is vented externally.

Replace the silicone sealant around the bath and wash hand basin.

Schedule 2.4

In the opinion of the Council, the following works if carried out in relation to the hazard, will result in the Order

Nature of the remedial action

Replace the UPVC glass pane in the bedroom.

Schedule 2.5

In the opinion of the Council, the following works if carried out in relation to the hazard, will result in the Order

Nature of the remedial action

Fit window restrictors to the bedroom and living room sash windows.

Schedule 2.6

In the opinion of the Council, the following works if carried out in relation to the hazard, will result in the Order

Nature of the remedial action

Replace the shower pull cord.

CITY OF WOLVERHAMPTON COUNCIL

**HOUSING ACT 2004
SECTION 8**

STATEMENT OF REASONS FOR DECISION TO TAKE ENFORCEMENT ACTION

Details of residential premises: Flat 2, 184 Newhampton Road East, Wolverhampton, West Midlands, WV1 4PQ

The City of Wolverhampton Council (“the Authority”)

Hereby give this statement of the reasons for their decision to take enforcement action (“the relevant action”) in respect of the above premises under section 5(2) of the Housing Act 2004 (“the Act”) namely:-

The hazard has been assessed as a category 1 hazard which means that the Local Authority have a duty to take action under Section 5 of the Housing Act 2004. An Emergency Prohibition Order was served because not only of the existence of a category 1 hazard at the residential premises, but the local authority were further satisfied that the hazard involved an imminent risk of serious harm to the health and safety of any occupiers. No management order is in force under Chapter 1 or 2 of Part 4 in relation to the premises mentioned.

The reasons why the Authority have decided to take the relevant action rather than any other kind (or kinds) of enforcement action under the provisions of sections 5(2) of the Act are as follows:-

As the hazard involves an imminent risk of serious harm to the health and safety of the occupants, it was felt that:

The service of a Hazard Awareness Notice would not be appropriate as this is an advisory notice only.

An Improvement Notice cannot require remedial works to start within 28 days of the service of the notice and it was deemed that the matter was so serious as to warrant immediate action.

A Prohibition Order becomes operative 28 days after it is made and it was deemed that the deterioration of conditions was so serious as to warrant immediate action.

The demand for available units of accommodation within the area would deem that neither demolition nor clearance is the most appropriate course of action.

DATED: 23/04/2024

SIGNED: *N Razak*

(Authorised on behalf of the Council to serve such notice)

All communications to be addressed to:

The Service Manager, Private Sector Housing, Regeneration, 2nd Floor Civic Centre,
St Peter’s Square, Wolverhampton, WV1 1RP
The officer dealing with this matter is Nadeem Razak
Tel No 07890640355

E-mail address: nadeem.razak@wolverhampton.gov.uk
Your attention is drawn to the notes attached