



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

Case reference : **CHI/43UK/HPV/2024/0001
HAV/43UK/HPV/2024/0601-0614**

Property : **Flats 1-15, Survey House, 4-6 Station
Road, Whyteleafe, Surrey, CR3 0EP**

Appellant : **Investview Limited**

Representative : **PPMS (Alvin Ormonde)
Joseph Cannon KC of counsel**

Respondent : **Tandridge District Council**

Representative : **Poonam Pattni of counsel**

Type of application : **Appeal against a prohibition order
Sections 21 and paragraph 7(1) of
Schedule 2 to the Housing Act 2004.**

Tribunal members : **Mr R Waterhouse FRICS
Ms C Barton MRICS
Ms T Wong**

**Date and Venue of
hearing** : **19 March 2025
FTT (Property Chamber) Residential
Property, Havant Justice Centre,
Elmleigh Road, Havant, Portsmouth,
PO9 2AL**

DECISION

Decisions of the Tribunal

1. The Tribunal upholds the fifteen Prohibition Notices in respect of Flats 1-15 Survey House, 4-6 Station Road, Whyteleafe, Surrey, CR3 0EP.
2. There is no application for costs to determine.

Background

3. The Tribunal was furnished with a bundle of 524 pages. Appearing for the Appellant were; Joseph Cannon KC of counsel, Mr Konig – Director of Investview Ltd and Mr Rozner of Regalway Property Licensing. For the Respondent, Poonam Pattni of counsel and Ms Dickman the Private Sector Housing PSH officer for Tandridge District Council. For ease of reference the following acronyms are used Health Housing and Safety Rating System (HHSRS), Town and Country Planning (General Permitted) Development Order 205/596 (GDPO) and Nationally Described Space Standards (NDSS).
4. The appeal follows the service of 15 Suspended Prohibition Orders (SPO) in respect of Flats 1-15 at Survey House. The SPOs were made on 9 May 2024, under sections 21 and 23 of the Housing Act 2004 (“2004 Act”) because the Council was satisfied that “Category 2” hazards were present at the individual flats as follows;

<u>Hazard</u>	<u>Category</u>	<u>Flat No</u>
Crowding and Space	2	ALL
Lighting	2	F1 F2 F3
Flames and Hot Surfaces	2	F1 F2 F3 F4 F6 F7 F8 F9 F10 F11 F12 F13 F14 F15
Position and Operability 2 of Amenities		ALL

5. The SPOs are suspended until 9 August 2024 and pending the outcome of this appeal in accordance with Housing Act 2004 section 24(5) and para 14 of Schedule 2.
6. The Prohibition Orders are as follows;

<u>Flat No</u>	<u>GIA as</u>	<u>Council (Respondent) HHSRS</u>	<u>Appellant</u>
Flat 1	20	<u>SQM</u> Crowding and Space Lighting Flames and Hot Surfaces Position and Operability of Amenities	None

Flat 2	20	Crowding and Space Lighting Flames and Hot Surfaces Position and Operability of Amenities	Excess cold Lighting Flames and Hot Surfaces Fire
Flat 3	20	Crowding and Space Position and Operability of Amenities	No HHSRS provided
Flat 4	22.2	Crowding and Space Flames and Hot Surfaces Position and Operability of Amenities	No internal inspection – Entry by Intruders
Flat 5	20	Crowding and Space Lighting Flames and Hot Surfaces Position and Operability of Amenities	No HHSRS provided
Flat 6	17.5	Crowding and Space Flames and Hot Surfaces Position and Operability of Amenities	No HHSRS provided
Flat 7	16	Crowding and Space Flames and Hot Surfaces Position and Operability of Amenities	Flames and Hot Surfaces
Flat 8	17.5	Crowding and Space Flames and Hot Surfaces Position and Operability of Amenities	Flames and Hot surfaces
Flat 9	17.5	Crowding and Space Flames and Hot Surfaces Position and Operability of Amenities	Fire Flames and Hot Surfaces
Flat 10	17.5	Crowding and Space Flames and Hot Surfaces Position and Operability of Amenities	Flames and Hot Surfaces
Flat 11	17.5	Crowding and Space Flames and Hot Surfaces Position and Operability of Amenities	Flames and Hot Surfaces
Flat 12	15	Crowding and Space Flames and Hot Surfaces Position and Operability of Amenities	Not inspected
Flat 13	17.5	Crowding and Space Flames and Hot Surfaces	Excess cold

		Position and Operability of Amenities	Flames and Hot Surfaces
Flat 14	17.5	Crowding and Space Flames and Hot Surfaces Position and Operability of Amenities	Position and Operability of Amenities
Flat 15	22.7	Crowding and Space Flames and Hot Surfaces Position and Operability of Amenities	Flames and Hot Surfaces

7. The flats are contained within a building known as Survey House which was previously used as an office with a shop front. The building comprises three storeys with shop frontage previously used as offices.
8. The Appellant applied for planning permission to convert it into residential use on 7 November 2019.
9. When the application for planning permission was made, (planning application reference: 2019/1962/NC), it fell to be determined under the rules of permitted development.
10. The Appellant's development gained "deemed consent" through Permitted Development on 2 January 2020, no formal decision was issued, but the Appellant could proceed with the development.
11. Survey House was converted to provide new dwellings by way of 14 self-contained flats and another self-contained Flat accessed through a courtyard.
12. On 1 September 2020, a Final Certificate was issued by Messrs Assent Building Control in accordance with section 51 of the Building Act 1984. The Certificate confirms that the "work concern [sic] a new dwelling."
13. On 6 October 2020, the converted Flats at Survey House were inspected by Croydon Council under the "Decent Homes" criteria, where some remedial works were required.
14. On 19 December 2023, the Council Tax department reported concerns about the conditions of Survey House to the Environmental Health team at Tandridge District Council.
15. On 9 January 2024, and 25 January 2024, the Respondent's Private Sector Housing team inspected the Flats at Survey House. On the latter occasion, Ms J Dickman, Private Sector Housing Officer of Tandridge District Council, was accompanied by a fire safety officer who considered the communal areas only and raised no concerns.

16. The measurements of each flat are set out in the witness statement of Ms Dickman, and these were not challenged by the Appellant. During the hearing, the issue of reduced height was raised and flats 13 and 14 respectively had 2.5m² and 2.0m² respectively identified as reduced height areas. Subtracting the reduced height areas gives 15m² and 15.5m² respectively.

<u>Flat</u>	<u>Size (sqm)</u>
1	20
2	20
3	20
4	22.2
5	20
6	20
7	16
8	17.5
9	17.5
10	17.5
11	18
12	17.5
13	17.5
14	17.5
15	22.5

17. Ms Dickman carried out a Housing Health and Safety Rating System (HHSRS) which resulted in Prohibition Orders from which this appeal follows.

The Hearing

The Suspended Prohibition Orders

18. The Respondent undertook following their inspection, a full HHSRS assessment.

The Law

19. Legislation concerning Prohibition Notices is set out in the Legal Annex attached.

The Appellant's case

20. Mr Joseph Cannon KC acting for the Appellant outlined their case which rested on the position that the Flats in Survey House under an HHSRS assessment were not overcrowded, notwithstanding that a number of lesser

hazards had been identified and that these were capable of remedy and so the Prohibition Notices should be revoked.

21. The Appellant within the bundle at [463] provided a copy of advice they had received from Mr Mark Davis of Counsel in respect of a request from Mr Alvin Ormonde of Planning and Project Management Services to advise Investview Ltd.
22. The advice covers Housing Act 1985 and the Housing Health and Safety Rating System (England) Regulations 2005 and guidance.
23. The advice notes that the Housing Act 1985 at Part X “Overcrowding” with section 324 providing a definition of overcrowding. [466]
24. The advice considers whether Survey House should be considered an HMO. At [469 para 28] the Appellant agrees with the Respondent that it should not. Noting, the only category of HMO into which Survey House might have fallen, would have been as a section 257, Housing Act 2004 HMO. However, because of the section 51, Building Act 1984 Final Certificate issued by Assent Building Control on 1 September 2020 it cannot.
25. The Appellant submits that as a starting point insofar as Survey House does not constitute a HMO, reference should be made to Part 10 of the 1985 Act for a definition of overcrowding , arguing that there is a “clear link between the definition of overcrowding given in the 1985 Act and the HHSRS if the Local Authorities Coordinators of Regulatory Services LACORS guidance is considered. Part 10 of the 1985 Act provides that a dwelling is overcrowded when the number of persons sleeping in the dwelling contravenes either the room standard in section 325 or the space standard in section 326.” [470 para 32]
26. The space standard is for 70 sq feet (6.5 sq m) or more. The Appellant argues that none of the units in Survey House breach this if occupied by a single person. [470 para 34]
27. The Appellant submits that the Respondent is incorrect in applying the Space Standard [469 para 25] citing that the Space Standard at paragraph 1 “These standard deals with the internal space within new dwellings and is suitable for application across all tenures”. When the Respondent is considering whether Survey house is “overcrowded” under HHSRS it is not considering a “new” dwelling but an existing one and therefore the Space Standard has no application.
28. The Appellant called as a witness Mr Konig, sole Director of Investview Limited. Mr Konig’s witness statement outlined the chronology of the development. Mr Konig’s evidence described actions that had been taken to remedy some of the HHSRS hazards identified including those concerning the “Flames Hot Surfaces and Materials”.

29. The Appellant called as a witness Mr Rozner, of Regalway Property Licensing who specialised in property licencing for residential properties.
30. Mr Rozner had been instructed by the Appellant to carry out an assessment under the HHSRS framework. Mr Rozner [484] works on the assumption the flats do not constitute an HMO.
31. Within Mr Rozner’s report it is submitted that “There are no legal minimum space requirements for self-contained flats under housing safety regulations. However certain advisory standards exist particularly for HMO licensing. The only legally required room size within housing law is for bedrooms within HMOs where a minimum space requirement is 6.51m² for a single occupant and 10.22m² for two people over the age of 10.”
32. Further Mr Rozner noting [484 para 5] “many councils refer to the Essex Standards which recommend 11m² for a fully self-contained unit. Comparing 10 different councils, most fell within 11m² to 13m² with Tandridge District Council setting a higher requirement of 14m².
33. Based on these findings Mr Rozner believes that the average space requirement for a self-contained unit should be between 11.5m² and 12m². Concluding that based on the assessment, there is no HHSRS risk associated with room sizes in this property. [484 para 5]
34. Considering Hazards Mr Rozner identifies a number of hazards in his report these in summary are;

<u>Hazard</u>	<u>Category</u>	<u>Flats affected</u>
Excess Cold	B1	2,13
Entry by Intruders	D2	4
Lighting	I2	2
Fire	E2 & F2	2,9,14
Flames, Hot surfaces & Materials	F2	2,7,8,9,10,11,13,15
Position & Operability of Amenities (poor Ergonomics)	F2	14

The Respondent’s case

35. The appeal was lodged on 28 May 2024 relying on the “general” right of appeal. The Respondent contended that the FTT had the power to confirm, quash or vary a prohibition order, and that the jurisdiction of the FTT is broad in that the appeal is by way of rehearing and that it may be determined having regard to matters of which the authority was unaware.

36. The Respondent noted that in *Clark v Manchester City Council* [2015] UKUT 129 (LC), Deputy Chamber President Martin Rodger KC, explained that the Tribunal is not required to start with a blank sheet of paper but is entitled to have regard to the views of the local housing authority whose decision is under appeal. Martin Roger KC then added that the recommendation by Buxton LJ in the Court of Appeal's decision in *London Borough of Brent v Reynolds* [2001] EWCA Civ 1843 that a county court judge should be slow to disagree with the views of the authority did not seem to him to apply with the same force to that of a specialist Tribunal.
37. Part 1 of the 2004 Act provides a framework for the assessment and enforcement of residential housing conditions; this adopts a system prescribed by the Housing Health and Safety Rating System (England) Regulations 2005/3208.
38. The HHSRS is based on the assessment of risk. It prescribes the descriptions of hazards, and within Schedule, there is a list of those circumstances: paragraph 11 refers to "Crowding and Space" and is described as "a lack of adequate space for living and sleeping". Schedule 2 of the DCLG Guidance for Landlords and Property Related Professionals (May 2006) explains that paragraph 11 considers the psychological needs for both social interaction and privacy. The health effects of crowding, a lack of space has been linked to psychological distress and various mental disorders. It is also linked to increased heart rate, increased perspiration, intolerance, inability to concentrate, hygiene risks, accidents and spread of contagious disease.
39. There are recent FTT decisions which assist in determining the probative value of a planning permission within the context of the 2004 Act. In *Levens Garth Holdings Ltd v Leeds City Council* [MAN/00DA/HPO/2021/0013-0016], Tribunal Judge Jonathan Holbrook considered the applicability of the National Described Space Standards (NDSS) to the assessment of a hazard within the HHSRS framework for *converted* rather than *new* properties. The Respondent asserts that this is in keeping with contemporaneous ministerial statements from 2020 when the NDSS was formally adopted as a minimum space standard in the General Permitted Development Order (GPDO).
40. Having heard expert evidence, Judge Holbrook made the following observations:

71. Contrary to the Appellant's position, we consider all of the above to be of relevance in informing the assessment of risk in this case. As Ms Park explains in her report, the NDSS has been in operation since 2015, having been drawn up by the government with advice from industry experts. It is a national, cross-tenure, space standard, administered through the planning system. Whilst it is not mandatory the NDSS is the current, minimum space standard against which homes of all types and tenures (including new-build and conversions, and flats, bedsits and HMOs) may be objectively assessed. It is clearly a relevant modern benchmark to consider when assessing the hazard of Crowding and

Space. The Metric Handbook is also relevant in our view- it is specifically identified in Annex D to the Operating Guidance as a source of information and guidance on Crowding and Space. Nor do we see any objection to the use of furniture schedules as an aid to assessing whether a room is large enough to safely accommodate the furniture items which might reasonably be deemed necessary.”The Respondent submits that non-compliance with the NDSS is not enough to “prove” a hazard. The Council will need a sound evidence base to justify the presence of a category 2 hazard in the individual flats. At paragraph 72 of *Levens Garth Holdings*, the Tribunal said...

72. We accept (for the reasons explained by Mr Belcher) that the Premises do not meet these standards. It is important to stress that this finding, of itself, does not necessarily lead us to conclude that there is a category 1 hazard of Crowding and Space. However, it is a strong indication that the likelihood of an occupier suffering any harm as a result of a Crowding and Space hazard must be considerably greater than the national average for all dwelling types. For this reason, we do not conclude that Mr Lord’s likelihood assessments are incorrect.

41. The Respondent asserts that their approach is twofold.

- (a) What the significance is of the planning permission within the context of the 2004 Act.
- (b) Whether the Respondent can demonstrate by reference to an evidence base, the presence of Category 2 Hazards.

Significance of planning

42. The Planning Application reference 2019/1962/NC proceeded by way of “prior approval” for the change of use of the building from Use Class B1(a) to Use Class C3 for use as 15 residential studio flats.

43. The process of prior approval is a time-limited process whereby the authority may consider a restricted range of planning matters before granting or refusing the proposal. The planning authority cannot consider the principle of conversion, nor can they consider matters relevant to design, size and layout. Only issues prescribed by the Town and Country Planning (General Permitted) Development Order (2015/596) (“GPDO”) can be considered by the Council’s local planning authority. When planning application 2019/1962/NC fell to be determined by the Council (decision dated 2 January 2020) there were no prescribed minimum room size requirements.

44. The change of use was therefore Permitted Development (“PD”), dispensing with a full planning application, enabling a conversion from office to dwelling house. It is therefore irrelevant that the Respondent PSH team did not object to the planning application because firstly, there was no lawful

basis to do so and secondly, as set out below, the Category 2 hazards include more than Crowding and Space,

45. In respect of Nationally Described Space Standards (“NDSS”) generally administered through the planning system, it is contended by the Appellant that the wording in paragraph 2, should have “no other statutory meaning or use” means that it cannot be relied on beyond the planning system. The Respondent asserts this is wrong. The GDPO was amended later in 2020 to formally incorporate Nationally Described Space Standards. This was in response to concerns raised within government that Permitted Development conversions mostly avoid making any positive contribution to local areas, fail to meet adequate design standards and often create worse quality environments.
46. On 30 September 2020, the Ministry of Housing Communities and Local Government (2018 to 2021) published a press release as follow:
- “New homes” delivered through Permitted Development Rights will have to meet space standards, Housing Secretary Robert Jenrick has announced today (30 September 2020).
 - The homes are instead consented through a lighter touch “prior approval” process, speeding up the delivery of these new homes- with over 60,000 homes provided over the last 4 years.
 - The measures announced today will mean that all new homes in England delivered through these rights will in the future have to meet the Nationally Described Space Standard.
 - The space standards begin at 37 m² of floorspace for a new one bed flat with a shower room (39m² with a bathroom), ensuring proper living space for a single occupier.
 - While homes delivered through Permitted Development Rights have little difference in quality compared to homes following a planning application, a minority of developers have been delivering small homes without justification. The changes announced today will put an end to this.”
47. The Respondent contends that the NDSS has gained significant traction in a wider housing setting, as remarked on in *Levens Garth Holdings*, “the NDSS is the current, minimum space standard against which homes of all types and tenures (including new –build and conversions, and flats, bedsits and HMOs) may be objectively assessed. It is clearly a relevant, modern benchmark to consider when accessing the hazard of Crowding and Space.”
48. The Appellant contends that PSH has no “jurisdiction” over the matter given the lawfulness of Survey House in planning terms.

49. The pre-amendment PD regime enabling conversion from office to residential accommodation was ultimately problematic and relied on other arms of regulatory regimes to bring housing back to acceptable standards. Planning Permission is not a trump card, it is only a permission, not a legally enforceable right which overrides other regulatory regimes.
50. In conclusion, the lawfulness or otherwise of Survey House in planning terms is largely irrelevant. The NDSS was and is the industry standard.

Are Category 2 hazards present?

51. The starting point, asserted by the Respondent is that non-compliance with the NDSS is a strong indicator that an occupier may be suffering harm as a result of a Crowding and Space hazard but that this is not conclusive.
52. For the Respondent Ms Dickman has submitted a witness statement within which it is noted that a HHSRS assessment was carried out on 9 January 2024 and 25 January 2024. The properties were determined as self-contained flats for the purposes of the HHSRS assessment and that the property did not constitute a House in Multiple Occupation.
53. Ms Dickman is of the view that the flats “do not provide a sufficient space to adequately separate different household activities, to store personal possessions, or to safely arrange basic items of furniture associated with normal household life”.
54. The report considers each flat in turn identifying hazards-common to all the flats was the hazard of overcrowding.
55. The calculation for the Hazard of overcrowding is carried out both for the potential and the actual occupancy. Within the Hazard calculation for overcrowding, taking flat 1 as an example the calculation is made up from class of harm, class I, weighting 10,000. To which a likelihood is applied this has been placed at 1 in 180 by Ms Dickman. The result of this calculation is 778. Other flats have the same or differing figures however the net result of the calculations is that they are all classed as being overcrowded.
56. The Appellant relies on a Decent Homes inspection carried out by Croydon Council, shortly after the development was complete at a time when it was unclear whether the Flats were occupied. It is submitted that the survey is of less probative value because;
- (a) The flats were only partially completed, a full inspection of all 15 flats have not been provided.
- (b) The Respondent’s inspections took place at a time when occupation had commenced. The evidence provided by Ms Dickman provides a realistic

insight as to how the internal space of each flat is unused, and the inadequacy of the same is abundantly clear.

- (c) The Decent Homes Inspection criteria was for the presence of Category 1 hazards not Category 2 hazards as identified by the Respondent Council. The assessment Criteria A is as follows:

Criterion A: Does the property meet the current statutory minimum standard for housing?

To be decent, a dwelling should be free of category 1 hazards under the HHSRS and the existence of such hazards should be a trigger for remedial action unless practical steps cannot be taken without disproportionate expense or disruption.

57. The HHSRS applies cross-tenure to all types of home and tenancy agreements. The Respondent Council is not aware of any enforceable occupancy restrictions – on a number of occasions it has been suggested that the Flats are intended for single person occupancy. However, no ASTs have been provided to that effect and during the visit of Ms Dickman on the 25 January 2025 F15 had a single bed and a double mattress on the floor.
58. The Respondent invites the Tribunal to confirm the 15 SPOs at Survey House.

Findings

59. The Tribunal has considered the following questions on the consideration of whether hazards were present and whether they were sufficient to warrant the 15 Prohibition Notices.

Influence of Planning Permission

60. The properties were constructed during a period where government policy permitted by extension of the Permitted Development rights, conversion of office to residential use. The planning process did not have regard to the size and nature of the units within the office to domestic conversion. Although the conversion under planning terms was entirely compliant, the permitted development gave no assurance on statutory regimes beyond that of planning. **The Tribunal gives no weight to the fact that the premises are planning compliant in the question of whether overcrowding is present under the HHSRS.**

Influence of Building control

61. Similarly, the Appellants were equally compliant with the building regulation regime. The purpose of building regulations covers matters such as fire, electrical safety of the building, this statutory regime again gives no assurance on any statutory regimes beyond that of building control. **The**

Tribunal gives no weight to the fact the premises are building control compliant in the question of whether overcrowding is present under HHSRS.

Influence of Decent Homes Inspection of 6 October 2020

62. The Tribunal heard evidence and submission relating to this inspection. The Appellants again relied upon this assessment of which there is no evidence to suggest it was not properly conducted. The Tribunal has heard that government policy changed around this time 30 September 2020, and that new domestic units would need to meet the Nationally Prescribed Space Standard, (NPSS). **The Tribunal finds that the impact of this statement is that the 15 flats are brought into the assessment regime of HHSRS referencing Standards (NPSS) superseding the Decent Homes Inspection.**

Influence of HMO standards

63. The Appellant has brought expert evidence to describe the assessment of the flats by reference to the HMO standards. These standards are intended to assess domestic units which may in most cases have a form of sharing that is their kitchens and bathrooms may be shared. The Tribunal has been provided with opinion in respect of whether Survey House should be considered an HMO. Advice to the Appellant has indicated that it should not, this is a position also held by the Respondent. As a consequence, the applicability of guidance to HMOs, which are occupations that differ from self-contained flats are not considered to be of relevance in determining the question of overcrowding under the HHSRS regime. **The Tribunal therefore does not give weight to the assessments carried out on the space standards derived from HMOs.**

Influence of NDSS on new or converted property.

64. In *Levens Garth Holdings Ltd v Leeds City Council* [MAN/ooDA/HPO/2021/0013-0016], Tribunal Judge Jonathan Holbrook considered the applicability of the NDSS [Nationally Described Space Standard] to the assessment of a hazard within the HHSRS framework for *converted* rather than *new* properties. **Given the ministerial statements from 2020 when the NDSS was formally adopted as a minimum space standard in the GPDO, the Tribunal finds that these are equally applicable to new properties.**

65. Additionally Judge Holbrook had reference to the Metric Handbook, this provides a minimum space size for flats of 27.5m².

66. The NDSS describes within the guidance the area of flats with showers the minimum being 37m².

67. **The Tribunal finds the actual sizes of the subject flats to range from 15m² to 22.5 m², these figures are significantly and materially lower than the figures in the Metric Handbook and the HDSS.**
68. The Tribunal found the witness Ms Dickman to be reliable. The Appellant called into question her reliability, citing the missing of a hazard in one of the flats and a number of errors within the witness statement in terms of incorrectly allocating different hazards for different flats. The central theme of the Respondents evidence which was she was of the view that all flats exhibited overcrowding and so the mis labelling of different non crowding hazards does not detract from the main thrust of her expert evidence. The Tribunal does not consider this materially detracts from her evidence.
69. The Appellant questioned Ms Dickman on how the calculations for hazard in respect of overcrowding were identified. In particular the examination focused on the selection of the likelihood of harm element of the calculation. Ms Dickman identified that the selection of the likelihood of harm was one based on professional judgement, although was not able to point to specific elements that had led her to this conclusion.
70. The Appellant's expert had taken the view that the flat sizes were adequate with reference to HMO space, and so had not undertaken such an exercise. The Tribunal in the absence of alternative professional view is content to accept the Respondent's expert, Ms Dickman's professional judgement.
71. The Tribunal finds that Category 2 Hazards in respect of overcrowding exist for all 15 of the flats and so agrees with the Respondents decision to serve Prohibition Notices.

Relevance of the non-crowding hazards

72. The Tribunal has heard evidence from Mr Rozner for the Appellant and Ms Dickman for the Respondent on hazards within this category. The Tribunal has also heard evidence from Mr Konig that some of the hazards have been remedied and others have potential solutions. Given the Tribunal has found that the flats exhibit an overcrowding hazard and that the Prohibition Orders must be upheld, the Tribunal does not make any findings on these remaining potential hazards.
73. The Tribunal has taken into account the fact that regrettably the moving of the occupants from the flats will be disruptive. However, the safety and welfare of the occupants must come first.
74. The Tribunal confirms the Suspended Prohibition Orders for Flats 1 to 15.

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).

Legal Annex

Housing Act 2004 Extracts

9 Guidance about inspections and enforcement action

(1) The appropriate national authority may give guidance to local housing authorities about exercising—

(a) their functions under this Chapter in relation to the inspection of premises and the assessment of hazards,

(b) their functions under Chapter 2 of this Part in relation to improvement notices, prohibition orders or hazard awareness notices,

(c) their functions under Chapter 3 in relation to emergency remedial action and emergency prohibition orders, or

(d) their functions under Part 9 of the Housing Act 1985 (c 68) in relation to demolition orders and slum clearance.

(2) A local housing authority must have regard to any guidance for the time being given under this section
[...]

Prohibition orders

20 Prohibition orders relating to category 1 hazards: duty of authority to make order

(1) If— (a) the local housing authority are satisfied that a category 1 hazard exists on any residential premises, and

(b) no management order is in force in relation to the premises under Chapter 1 or 2 of Part 4,
making a 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).

(2) A prohibition order under this section is an order imposing such prohibition or prohibitions on the use of any premises as is or are specified in the order in accordance with subsections (3) and (4) and section 22.

(3) The order may prohibit use of the following premises— (a) if the residential premises on which the hazard exists are a dwelling or HMO which is not a flat, it may prohibit use of the dwelling or HMO; 10

(b) if those premises are one or more flats, it may prohibit use of the building containing the flat or flats (or any part of the building) or any external common parts;

(c) if those premises are the common parts of a building containing one or more flats, it may prohibit use of the building (or any part of the building) or any external common parts. Paragraphs (b) and (c) are subject to subsection (4).

(4) The notice may not, by virtue of subsection (3)(b) or (c), prohibit use of any part of the building or its external common parts that is not included in any residential premises on which the hazard exists, unless the authority are satisfied—

(a) that the deficiency from which the hazard arises is situated there, and

(b) that it is necessary for such use to be prohibited in order to protect the health or safety of any actual or potential occupiers of one or more of the flats.

(5) A prohibition order under this section may relate to more than one category 1 hazard on the same premises or in the same building containing one or more flats.

(6) The operation of a prohibition order under this section may be suspended in accordance with section 23.

21 Prohibition orders relating to category 2 hazards: power of authority to make order

(1) If—

(a) the local housing authority are satisfied that a category 2 hazard exists on any residential premises, and

(b) no management order is in force in relation to the premises under Chapter 1 or 2 of Part 4,

the authority may make a prohibition order under this section in respect of the hazard.

(2) A prohibition order under this section is an order imposing such prohibition or prohibitions on the use of any premises as is or are specified in the order in accordance with subsection (3) and section 22.

(3) Subsections (3) and (4) of section 20 apply to a prohibition order under this section as they apply to one under that section.

11 (4) A prohibition order under this section may relate to more than one category 2 hazard on the same premises or in the same building containing one or more flats.

(5) 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.

(6) The operation of a prohibition order under this section may be suspended in accordance with section 23.

27 Service of copies of prohibition orders etc and related appeals

Schedule 2 (which deals with the service of copies of prohibition orders, and notices relating to their revocation or variation, and with related appeals) has effect.

SCHEDULE 2

PROCEDURE AND APPEALS RELATING TO PROHIBITION ORDERS

Section 27

Part 1

Service of Copies of Prohibition Orders Service on owners and occupiers of dwelling or HMO which is not a flat

1

(1) This paragraph applies to a prohibition order where the specified premises are a dwelling or HMO which is not a flat.

(2) The authority must serve copies of the order on every person who, to their knowledge, is—

(a) an owner or occupier of the whole or part of the specified premises;

(b) authorised to permit persons to occupy the whole or part of those premises; or

(c) a mortgagee of the whole or part of those premises.

(3) The copies required to be served under sub-paragraph (2) must be served within the period of seven days beginning with the day on which the order is made.

(4) A copy of the order is to be regarded as having been served on every occupier in accordance with sub-paragraphs (2)(a) and (3) if a copy of the order is fixed to some conspicuous part of the specified premises within the period of seven days mentioned in sub-paragraph (3).

Service on owners and occupiers of building containing flats etc

2

(1) This paragraph applies to a prohibition order where the specified premises consist of or include the whole or any part of a building containing one or more flats or any common parts of such a building.

(2) The authority must serve copies of the order on every person who, to their knowledge, is—

(a) an owner or occupier of the whole or part of the building;

(b) authorised to permit persons to occupy the whole or part of the building;
or

(c) a mortgagee of the whole or part of the building.

(3) Where the specified premises consist of or include any external common parts of such a building, the authority must, in addition to complying with sub-paragraph (2), serve copies of the order on every person who, to their knowledge, is an owner or mortgagee of the premises in which the common parts are comprised.

(4) The copies required to be served under sub-paragraph (2) or (3) must be served within the period of seven days beginning with the day on which the order is made.

(5) A copy of the order is to be regarded as having been served on every occupier in accordance with sub-paragraphs (2)(a) and (4) if a copy of the order is fixed to some conspicuous part of the building within the period of seven days mentioned in sub-paragraph (4).

Part 3

Appeals Relating to Prohibition Orders

Appeal against prohibition order

7 (1) A relevant person may appeal to [the appropriate Tribunal] against a prohibition order.

(2) Paragraph 8 sets out a specific ground on which an appeal may be made under this paragraph, but it does not affect the generality of subparagraph (1).

8

(1) An appeal may be made by a person under paragraph 7 on the ground that one of the courses of action mentioned in sub-paragraph (2) is the best course of action in relation to the hazard in respect of which the order was made.

(2) The courses of action are—

(a) serving an improvement notice under section 11 or 12 of this Act;

- (b) serving a hazard awareness notice under section 28 or 29 of this Act;
- (c) making a demolition order under section 265 of the Housing Act 1985 (c 68).

Appeal against decision relating to revocation or variation of prohibition order **9**

A relevant person may appeal to [the appropriate Tribunal] against—

- (a) a decision by the local housing authority to vary a prohibition order, or
- (b) a decision by the authority to refuse to revoke or vary a prohibition order.

Time limit for appeal

10

(1) Any appeal under paragraph 7 must be made within the period of 28 days beginning with the date specified in the prohibition order as the date on which the order was made.

(2) Any appeal under paragraph 9 must be made within the period of 28 days beginning with the date specified in the notice under paragraph 3 or 5 as the date on which the decision concerned was made.

(3) [The appropriate Tribunal] may allow an appeal to be made to it after the end of the period mentioned in sub-paragraph (1) or (2) 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).

Powers of . . . Tribunal on appeal under paragraph 7

11

(1) This paragraph applies to an appeal to [the appropriate Tribunal] under paragraph 7.

(2) The appeal— (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.

(3) The Tribunal may by order confirm, quash or vary the prohibition order.

(4) Paragraph 12 makes special provision in connection with the ground of appeal set out in paragraph 8.

12

(1) This paragraph applies where the grounds of appeal consist of or include that set out in paragraph 8.

(2) When deciding whether one of the courses of action mentioned in paragraph 8(2) is the best course of action in relation to a particular hazard,

the Tribunal must have regard to any guidance given to the local housing authority under section 9.

(3) Sub-paragraph (4) applies where—

(a) an appeal under paragraph 7 is allowed against a prohibition order made in respect of a particular hazard; and

(b) the reason, or one of the reasons, for allowing the appeal is that one of the courses of action mentioned in paragraph 8(2) is the best course of action in relation to that hazard.

(4) The Tribunal must, if requested to do so by the appellant or the local housing authority, include in its decision a finding to that effect and identifying the course of action concerned.

Powers of . . . Tribunal on appeal under paragraph 9

13

(1) This paragraph applies to an appeal to [the appropriate Tribunal] under paragraph 9.

(2) Paragraph 11(2) applies to such an appeal as it applies to an appeal under paragraph 7. 15

(3) The Tribunal may by order confirm, reverse or vary the decision of the (3) The Tribunal may by order confirm, reverse or vary the decision of the local housing authority.

(4) If the appeal is against a decision of the authority to refuse to revoke a prohibition order, the Tribunal may make an order revoking the prohibition order as from a date specified in its order.

“The operative time” for the purposes of section 24(5)

14

(1) This paragraph defines “the operative time” for the purposes of section 24(5) (operation of prohibition orders).

(2) If an appeal is made under paragraph 7 against a prohibition order which is not suspended, and a decision on the appeal is given which confirms the order, “the operative time” is as follows— (a) if the period within which an appeal to the [Upper Tribunal] may be brought expires without such an appeal having been brought, “the operative time” is the end of that period;

(b) if an appeal to the [Upper Tribunal] is brought, “the operative time” is the time when a decision is given on the appeal which confirms the order.

(3) If an appeal is made under paragraph 7 against a prohibition order which is suspended, and a decision is given on the appeal which confirms the order, “the operative time” is as follows— (a) the time that would be the operative time under sub-paragraph (2) if the order were not suspended, or

(b) if later, the time when the suspension ends.

(4) For the purposes of sub-paragraph (2) or (3)—

(a) the withdrawal of an appeal has the same effect as a decision which confirms the notice, and

(b) references to a decision which confirms the order are to a decision which confirms it with or without variation.

“The operative time” for the purposes of section 25(7)

15

(1) This paragraph defines “the operative time” for the purposes of section 25(7) (revocation or variation of prohibition orders).

(2) If no appeal is made under paragraph 9 before the end of the period of 28 days mentioned in paragraph 10(2), “the operative time” is the end of that period.

(3) If an appeal is made under paragraph 10 within that period and a decision is given on the appeal which confirms the variation, “the operative time” is as follows—

(a) if the period within which an appeal to the [Upper Tribunal] may be brought expires without such an appeal having been brought, “the operative time” is the end of that period;

(b) if an appeal to the [Upper Tribunal] is brought, “the operative time” is the time when a decision is given on the appeal which confirms the variation.

(4) For the purposes of sub-paragraph (3)—

(a) the withdrawal of an appeal has the same effect as a decision which confirms the variation, and

(b) references to a decision which confirms the variation are to a decision which confirms it with or without variation.

Meaning of “relevant person”

16

(1) In this Part of this Schedule “relevant person”, in relation to a prohibition order, means a person who is—

(a) an owner or occupier of the whole or part of the specified premises,

(b) authorised to permit persons to occupy the whole or part of those premises, or

(c) a mortgagee of the whole or part of those premises.

(2) If any specified premises are common parts of a building containing one or more flats, then in relation to those specified premises, “relevant person” means every person who is an owner or mortgagee of the premises in which the common parts are comprised.