FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**MAN/00CG/HPO/2022/0005-0011**
Premises	**:**	**Flat 101, Room 3** **and Flats 110, 111, 112, 113, 114 & 115** **Chapel Walk House Apartments** **11-15 Fargate and 12-13, 20-30 (even)** **Chapel Walk** **Sheffield** **S1 2HD**
Applicant	**:**	**Chapel Walk City Centre Ltd**
Representative	**:**	**Mr L Glenister, Counsel** **Solomon Taylor & Shaw LLP**
Respondent	**:**	**Sheffield City Council**
Representative	**:**	**Mr D Gilchrist, Counsel** **Legal Services, Sheffield City Council**
Type of Application	**:**	**Appeals against Prohibition Orders under the Housing Act 2004**
Tribunal Members	**:**	**Judge J Holbrook** **Regional Surveyor N Walsh**
Date and venue of Hearing	**:**	**23 & 24 October 2023** **Manchester**
Date of Decision	**:**	**30 November 2023**

DECISION

DECISION

A. The Prohibition Order relating to Flat 101, Room 3 at Chapel Walk House Apartments is confirmed.

B. The Prohibition Orders relating to each of Flats 110, 111, 112, 113, 114 and 115 are quashed (as are the associated demands for payment of the Respondent's administrative expenses).

C. The Respondent must reimburse the Applicant for tribunal fees in the sum of £771.43.

REASONS

PROCEDURAL HISTORY

1. This is an appeal (technically seven appeals) by Chapel Walk City Centre Limited against seven prohibition orders made by Sheffield City Council on 19 October 2022 ("the Prohibition Orders"). The first of the Prohibition Orders relates to Flat 101, Room 3 at Chapel Walk House Apartments in Sheffield; and the other six relate to Flats 110, 111, 112, 113, 114 and 115 respectively (together, "the Premises").

2. The Prohibition Orders were made under section 20 of the Housing Act 2004 and the effect of each Order is to prohibit the use for human habitation of the premises in question. One of the Prohibition Orders (relating to Flat 110) provided for its operation to be suspended until the later of (1) the existing tenant ceasing to occupy those premises; and (2) six months from the date on which the order becomes operative.

3. The appeals against the Prohibition Orders were made on 16 November 2022, under paragraph 7 of Schedule 2 to the 2004 Act. The Applicant asks the Tribunal to quash all seven Prohibition Orders (and the associated demands for payment of Sheffield Council's administrative expenses).

4. An in-person hearing was held at the Tribunal's hearing centre in Manchester on 23 and 24 October 2023 at which the Applicant was represented by Leon Glenister and the Respondent by David Gilchrist, both of counsel. We are grateful for their assistance.

5. We heard oral evidence for the Respondent local housing authority from Mr Daniel Armstrong (Senior Private Housing Standards Officer). For the Applicant, we heard oral evidence from Mr William Caldwell (Asset Manager at LRC Management UK Ltd); Mr Chris Jones (Technical Director at MES Building Solutions); and Mr Richard Lord (an independent Chartered Environmental Health Practitioner). We were also provided with a hearing bundle containing extensive documentary evidence, parts of which were referred to during the hearing.

6. Following the hearing, at approximately 2pm on 22 November, the Tribunal made a site visit to inspect the Premises in the presence of Mr Caldwell, Mr Armstrong and others. The weather at the time was overcast but dry.

FACTUAL BACKGROUND AND DESCRIPTION OF THE PREMISES

7. The Applicant company is a special purpose vehicle created for the sole purpose of acquiring and holding the building which includes the Premises (Chapel Walk House Apartments ("the Building")) on behalf of an investment fund. It acquired the Building on 15 October 2021.

8. The Building is a six-storey development in Sheffield city centre and comprises five storeys of residential accommodation above commercial premises on the ground floor (which are not owned by the Applicant). The residential parts are redeveloped office space. The redevelopment was completed before the Applicant acquired the Building (a building control completion certificate having been issued on 19 January 2021) and parts of the Building – including some of the Premises – were tenanted at the time of acquisition. We understand that the redevelopment did not require planning permission.

9. Although the main part of the Building is a six-storey structure fronting Fargate, Flats 110 – 115 are located on the upper (first floor) storey of a two-storey protrusion to the rear/east of the main structure. Flats 110 – 114 are one and two-bedroom flats, each of which also has a separate bathroom and kitchen. There are no conventional windows in any of these flats. However, daylight penetrates into each bedroom through a rooflight recessed into the ceiling. The glazing is opaque and so it is not possible to see anything through the rooflight. A horizontal blind fitted to the ceiling enables the amount of daylight penetrating into the room to be reduced.

10. Flat 115 is similar, save that it is a 'C-shaped' bedsit, with no physical division between the kitchen area and the rest of the living accommodation (which is positioned beneath a rooflight). It does have a separate bathroom.

11. Flats 110 – 115 are located in a row and are accessed by means of the same internal corridor (Flat 110 being furthest away from the main six-storey structure). Externally, these flats share a flat roof which is bounded on three sides (north, west and south) by the taller elevations of adjoining buildings. The rooflights sit on top of this flat roof.

12. Flat 101 is slightly different: whilst again on the first floor, it is a three-bedroom flat located within the main structure of the Building. There is a shared kitchen, but each bedroom has its own en-suite bathroom. Rooms 1 and 2 have conventional windows, but Room 3 does not: it has a recessed rooflight instead. This rooflight is smaller than the ones found in Flats 110 – 115. Its external location is also different: it is located on a

small flat roof at the bottom of a relatively narrow lightwell, and is therefore surrounded on all four sides by taller building elevations. Only Room 3 is subject to a Prohibition Order.

13. The Premises are all simply furnished, with a bed in each 'bedroom' and a desk and chair suitable for studying. Each kitchen has fitted cupboards and appliances and a very small table and stools for dining. With the possible exception of the kitchen in Flat 115, however, the kitchens appeared too small to facilitate dining in comfort, and there was evidence in some of the flats that the occupants used the 'bedroom' areas for dining also. None of the flats are furnished with additional sofas or armchairs, and there are no communal living facilities provided within the wider Building.

14. We gather that each of the Premises is currently let on an assured shorthold tenancy granted for an initial period of six months, and that the tenants are all either students or working professionals. So Flat 101 is subject to three separate tenancies, for example. At the time of our inspection, we noted that the Premises appeared to be occupied by various young adults, but also by at least two babies and a child. We were told that all tenancies were granted following in-person or "virtual" viewings by the prospective tenants. Mr Caldwell (the asset manager with responsibility for the Building) accepted that there has been a degree of "churn" of tenants, but said that the Premises have not been difficult to let (albeit at a rental discount compared to similarly-sized flats with conventional windows), and he noted that Flat 110 had been tenanted by the same individual for about 18 months. Other tenancies of the Premises have either been renewed or the tenants are holding over. Nevertheless, it was also acknowledged that significant letting voids have also been experienced in respect of some of the Premises.

HHSRS ASSESSMENT AND MAKING OF PROHIBITION ORDERS

15. The Premises first came to the notice of Sheffield's City Council's Housing Standards Team in July 2021 following an inspection of the Building by Mr Armstrong and others as part of the council's approved student property scheme. Mr Armstrong was concerned to discover that seven of the 48 flats within the Building have rooflights, rather than conventional windows. He returned on 14 September to make a more detailed inspection of the Premises and to assess their condition using the housing health and safety rating system (HHSRS) which was established under Part 1 of the 2004 Act. We explain the HHSRS in more detail below, but it operates by reference to the existence of "category 1" or "category 2" hazards on residential premises. For these purposes, a hazard is any risk of harm to the health or safety of an actual or potential occupier of the premises which arises from a deficiency in them, and category 1 hazards are more serious than category 2 hazards.

16. Mr Armstrong's assessment of the Premises led him to conclude that there is a serious (category 1) lighting hazard in relation to each of the flats in question due to there being a severely restricted availability of

natural light afforded to the habitable rooms within each flat and because there is no outlook afforded by the rooflights at all.

17. Discussions took place between Mr Armstrong and the owners of the Building to explore whether anything could be done to improve the position, but Mr Armstrong concluded that none of the suggestions put forward would adequately address his concerns and, following a further inspection on 10 May, Sheffield City Council issued prohibition orders in relation to the Premises on 26 May 2022. Those orders were procedurally defective, however, and they were revoked on 22 June.

18. Mr Armstrong re-inspected the Premises again on 16 September and, on 19 October 2022, the council served the seven Prohibition Orders which are the subject of these appeals, together with demands for payment of the council's expenses in connection with service of the orders.

19. Each of the Prohibition Orders was made in broadly similar terms (although, as already noted, the order relating to Flat 110 was suspended), and each order identifies a category 1 hazard of lighting. The Prohibition Order relating to Flat 101, Room 3, for example, gives the following explanation of the deficiencies giving rise to this hazard:

> "The natural light in the room is provided solely by the means of one rooflight, which is recessed 1 metre into the ceiling, and is also opaque. This does not afford the occupants any outlook whatsoever, which can have a severe impact on the psychological health of an occupant over the twelve month period. Although the affected dwelling is at first floor level, an occupant would feel as they are living in a subterranean room and this is further exaggerated by the opacity of the rooflight.
>
> The positioning of the surrounding building elevations creates a canyon effect, with the rooffight enclosed on three sides by external walls. As such there is not sufficient adequate open space outside the windows to allow for adequate light penetration. This significantly reduces the amount of natural light that would otherwise be able to illuminate the room.
>
> The mechanically ventilated bathroom and kitchen have no means of natural lighting at all. There are no normal eye level views afforded anywhere within the dwelling. This is exacerbated by the fact that there are no alternative communal facilities in the building with natural lighting and/or an outlook. Therefore, the occupiers will spend all of their time in the affected dwelling. Whilst the two other bedrooms in flat 101 have large, outward facing windows, the occupant of room 3 has no access to these.
>
> The low level of natural lighting in the dwelling increases an occupiers' reliance on artificial lighting, which can cause eye strain. Apart from the difficulty of reading without artificial light, it is likely that most people would also suffer some psychological harm from living in the dwelling. Seasonal Affective Disorder from lack of light and reduction in vitamin D absorption which make an occupant more susceptible to illnesses (including Coronavirus) are likely harm outcomes from such

conditions, as are the psychological harms such as feelings of isolation, loneliness, and anxiety that result from the lack of an outlook."

20. The corresponding explanation provided in each of the other Prohibition Orders is very similar save that, in relation to Flat 110, the lack of adequate light penetration by means of the rooflight is attributed to the fact that the positioning of the surrounding building elevations immediately enclose the rooflight to the north. In relation to Flat 115, it is attributed to the fact that the surrounding elevations immediately enclose the rooflight on three sides (but without reference to a "canyon effect"). The Prohibition Orders also acknowledge that the flats which have two bedrooms also have two rooflights (one in each bedroom).

21. Each of the Prohibition Orders states that it is Sheffield City Council's opinion that there are no practicable works available to remedy the deficiencies that are creating the lighting hazard. As such, and considering the severity of the hazard and long term health impacts on the occupants, the most appropriate course of action, in the council's view, is to prohibit the use of the dwelling for human habitation.

EVIDENCE ABOUT ACTUAL DAYLIGHT LEVELS

22. Following service of the Prohibition Orders, the Applicant commissioned an Internal Daylight Report in relation to the Premises. That report (dated 28 April 2023) was prepared for the purposes of these proceedings by Chris Jones, Technical Director at MES Building Solutions, and it was admitted as expert evidence. Mr Jones also attended the hearing to provide additional oral evidence about the matters discussed in his report, and we are particularly grateful for his assistance.

23. Mr Jones stated that he had been instructed to assess the expected amount of natural daylight in the habitable rooms within the Premises and compare these results to the recognised planning guidance in place when the conversion of the Building was completed. That guidance was published by the Building Research Establishment in 2011. It states that daylight provision within new residential habitable rooms may be checked by using the Average Daylight Factor (ADF). ADF is a measure of the daylight within the room expressed as a percentage of the total daylight availability from the unobstructed sky dome.

24. There are no minimum mandatory requirements for daylighting in Building Regulations for England & Wales, but the guidance set out in the BRE's guidance is widely accepted as the approved methodology when calculating light levels in habitable rooms. Moreover, BS 8206-2 (Code of Practice for Daylighting), issued by the BSI in 2008, states that it is considered good practice to ensure that rooms in dwellings have a "predominantly daylit appearance". In order to achieve this the ADF should be at least 2%. The Code of Practice states that, if the ADF in a space is at least 5%, then electric lighting is not normally needed during the daytime, but that supplementary electric lighting is usually required

if the ADF in a space is between 2% and 5%. It goes on to recommend that, even if a predominantly daylit appearance is not achievable in a dwelling, the ADF should be at least the following value:

Kitchens	2%
Living Rooms	1.5%
Bedrooms	1%

25. Where one room serves more than one purpose, the minimum ADF should be that for the room type with the highest value. For example, in a space which combines a living room and a kitchen the minimum ADF should be 2%.

26. Mr Jones said that these recommendations are generally taken into account by local planning authorities when deciding whether to grant planning permission for new developments. A design proposal which fell significantly short of the minimum ADF values would, in Mr Jones' experience, be likely to meet with resistance.

27. Mr Jones' Internal Daylight Report concluded that the individual habitable rooms within the Premises have the following ADF values:

Room	**ADF (%)**
Flat 101, Room 3	0.35
Flat 110, Room 1	2.67
Flat 111, Room 1	1.94
Flat 111, Room 2	1.72
Flat 112, Room 1	1.65
Flat 112, Room 2	1.05
Flat 113, Room 1	1.49
Flat 113, Room 2	1.46
Flat 114, Room 1	1.38
Flat 114, Room 2	1.34
Flat 115, Room 1	0.59

28. As a result of his technical analysis, and on the assumption that each of the rooms assessed would be used as a bedroom, Mr Jones thus concluded that the nine rooms within Flats 110-114 achieve ADF values that meet the BRE planning guidelines. However, both Flat 101, Room 3, and Flat 115 fall short of the guideline values. Mr Jones therefore went on to consider whether anything could be done to improve the ADF values for those two flats. He concluded that little could be done to improve the position for Flat 101, Room 3. However, he considered that

there is scope to amend the size and shape of the habitable space in Flat 115. The flat is currently a C-shaped bedsit with a through space to the kitchen area. The kitchen area is further away from the rooflight and so receives less daylight. Mr Jones recommended that, were the bedroom area to be separated by a partition wall, to form a smaller rectangular room lit by the existing roof light and a separate, internal, kitchen area provided, similar to the layouts of the other flats, this separate bedroom would achieve an ADF of 1.09%, bringing it within the BRE planning guidelines.

LAW

Operation of the HHSRS

29. Part 1 of the Housing Act 2004 deals with housing conditions, and Chapter 1 contains a system (the HHSRS) for assessing housing conditions and enforcing housing standards. The Act provides for the HHSRS to be used by local housing authorities to assess the condition of residential premises in their area. Using the system, specified hazards can be identified, calculating their seriousness as a numerical score by a method prescribed by the Housing Health and Safety Rating System (England) Regulations 2005.

30. The 2005 Regulations prescribe the descriptions of category 1 and category 2 hazards, as well as prescribing the method for scoring their seriousness. Regulation 2 defines "harm" as harm within any of Classes 1 to IV as set out in Schedule 2. The Schedule provides that Class 1 harm is "such extreme harm as is reasonably foreseeable as a result of the hazard in question, including -", and then are set out "(a) death from any cause" and, from (b) to (g), lung cancer, malignant tumours, permanent paralysis below the neck, regular severe pneumonia, permanent loss of consciousness and 80% burn injuries. Class II harm is "severe harm" (including, for example, cardio-respiratory disease and serious burns). Class III harm is "serious harm" (including, for example, chronic severe stress). Class IV is "moderate harm" (including, for example, regular serious coughs and colds).

31. Regulation 3(1) provides that a hazard is of a prescribed description for the purposes of the 2004 Act where the risk of harm is associated with the occurrence of any of the matters or circumstances listed in Schedule 1. The list includes: "13. Lighting" which is then described as "A lack of adequate lighting".

32. Regulation 7 prescribes bands of hazards from A to J on the basis of a range of numerical scores. Thus a Band A hazard is one with a numerical score of 5000 or more; a Band B hazard is one with a numerical score of 2000 to 4999; and a Band C hazard is one with a numerical score of 1000 to 1999. Regulation 8 provides that a hazard falling within band A, B or C is a category 1 hazard and that a hazard falling within any other band is a category 2 hazard.

33. The numerical score for a hazard is reached in a number of steps prescribed by regulation 6. First the inspector is required to assess the likelihood, during the period of 12 months beginning with the date of assessment, of a relevant occupier suffering any harm as the result of that hazard as falling within one of a range of 16 ratios of likelihood that are set out. For each range there is also set out a representative scale point of range (L, as it is called in a formula that later falls to be applied). Thus, for instance, in the range of ratios of likelihood between 1 in 4200 and 1 in 2400 the representative scale point of range is stated to be 3200.

34. Who is a "relevant occupier" is defined in regulation 6(7) by reference to particular matters contained in Schedule 1. For paragraph 13 (Lighting) the relevant occupier is any occupier.

35. The second step requires the inspector to assess which of the four classes of harm a relevant occupier is most likely to suffer. Thirdly they must assess the possibility of each of the three other classes of harm occurring as a result of that hazard, as falling within a range of percentages of possibility. For each range there is also set out a representative scale point of the percentage range (RSPPR). Thus, for instance, for the range 0.15% to 0.3% the RSPPR is 0.2%.

36. Step four requires the inspector to bring the total of RSPPRs for the four classes up to 100%. To do this they add the percentages of the three RSPPRs they have reached at step three, take the total away from 100% and attribute what is left to the class of harm that they assessed to be most likely to occur.

37. Step five is the production of a numerical score for the seriousness of the hazard for each of the four classes of harm. For each of these, L (see paragraph 33 above) is multiplied by the RSPPR and then by a further factor, which weights the seriousness of the classes of harm. This factor is 10000 for Class I, 1000 for Class II, 300 for Class III and 10 for Class IV. The final step is to add the four individual numerical scores to produce the numerical score that can be related to the prescribed bands.

Enforcement action

38. If a local housing authority makes a category 1 hazard assessment (i.e., it identifies a hazard that scores 1000 or above, so that it falls within Band A, B or C), it is obliged under section 5(1) of the 2004 Act to take appropriate enforcement action – the courses of action which might be "appropriate" in this regard (which include making a prohibition order or an improvement notice, or serving a hazard awareness notice) being identified in section 5(2). If two or more courses of action are available the authority must take the course which it considers to be the most appropriate.

39. If a local housing authority makes a category 2 hazard assessment, it has a discretion whether or not to take enforcement action. If the authority decides to act in respect of such a hazard, the options available to it again

include making a prohibition order or improvement notice, or serving a hazard awareness notice. However, a local housing authority must be mindful as to which statutory power it is invoking: whilst prohibition orders may be made in respect of both category 1 and category 2 hazards, for example, a prohibition order which relates to a category 1 hazard must be made under section 20 of the 2004 Act, whereas a prohibition order which relates to a category 2 hazard can only be made under section 21.

40. A prohibition order may prohibit the use of a dwelling, an HMO, or a building (or part of a building) containing flats, and it may impose such prohibitions on the use of the premises as the local housing authority considers appropriate in view of the hazard or hazards in respect of which the order is made.

Appeals

41. The making of prohibition orders is dealt with in sections 20 – 22 of the 2004 Act and a right of appeal is conferred by paragraph 7(1) of Schedule 2. The Tribunal may by order confirm, quash or vary the prohibition order.

42. An appeal against a prohibition order is to be by way of a rehearing, but may be determined having regard to matters of which the local housing authority was unaware. However, the scope of the Tribunal's ability to have regard to such matters must be understood in the light of the Court of Appeal's recent judgment in *London Borough of Waltham Forest v Hussain* [2023] EWCA Civ 733: the Tribunal's task is to determine whether the decision under appeal was wrong at the time it was taken. So an appeal should not be determined by reference to facts which occurred after the date of the local authority's decision, except to the extent that they throw light on the question whether the local authority's decision was wrong.

43. The right of appeal against a prohibition order is a general one, but a specific ground on which an appeal may be made is that the best course of action in relation to the hazard in respect of which the order was made is serving an improvement notice or a hazard awareness notice. Where an appeal consists of or includes this specific ground, the Tribunal must have regard to any guidance given to the local housing authority under section 9 of the 2004 Act when deciding whether, for example, serving a hazard awareness notice is the best course of action in relation to a particular hazard. Such guidance has been given in the Housing Health and Rating System Operating Guidance ("the Operating Guidance") and in the Housing Health and Safety Rating System Enforcement Guidance ("the Enforcement Guidance"), both issued by the Office of the Deputy Prime Minister in February 2006. We make further reference to these publications below.

DISCUSSION

Grounds of appeal and the Tribunal's approach

44. There is no dispute that a lack of natural light in a dwelling can cause psychological harm to occupiers and has the potential to give rise to category 1 and category 2 hazards. Nor is it in dispute that – in some of the Premises at least – the amount of natural daylight which is able to penetrate through the rooflight(s) is less than ideal. It is therefore common ground that the Premises give rise to lighting hazards, but how serious are those hazards? And what is the best course of action for the local housing authority to take?

45. The Applicant argues that there is no category 1 hazard in relation to any of the Premises. Alternatively, it argues that serving a hazard awareness notice or an improvement notice would have been the most appropriate course of action for Sheffield City Council to take in relation to any category 1 lighting hazards which do exist.

46. The Applicant disputes the council's HHSRS hazard assessments: it asserts that the officer who made those assessments (Mr Armstrong) has misunderstood what constitutes "harm" in this context and has overestimated the likelihood of harm occurring within the relevant 12-month period. Further, the Applicant asserts that Mr Armstrong was wrong to take account of possible harm associated with the fact that none of the Premises afford an occupant any external view or outlook. It is said that this has caused Mr Armstrong to further overestimate the likelihood of harm.

47. As stated above, the appeal is by way of a rehearing. The Tribunal's task is not simply a matter of reviewing whether the Respondent's decision to make the Prohibition Orders was reasonable. Rather, the Tribunal must decide for itself – in respect of each of the rooms/flats in question – whether there is a category 1 lighting hazard and, if so, whether making a Prohibition Order was the appropriate action to take. The views of the local housing authority are, of course, relevant and must be afforded appropriate weight and respect: the Tribunal must pay careful attention to the reasons why the authority reached the decision that it did. To the extent that it disagrees with those reasons, the Tribunal must explain why. Nevertheless, the Tribunal must make its own decision based on the available evidence and applying its own knowledge of local housing conditions.

48. We are, however, mindful of the fact that the Tribunal does not have particular expertise in carrying out HHSRS assessments and we are therefore grateful to the parties for referring us to some helpful guidance for tribunals faced with a dispute involving HHSRS assessments: in *Bristol City Council v Aldford Two LLP* [2011] UKUT 130 (LC)) the Upper Tribunal (Lands Chamber) recognised the risk that, by reducing to numerical terms essentially subjective judgements of risk, the HHSRS process may give a misleading impression of scientific precision to the

assessment results. Nevertheless, the Upper Tribunal was not thereby suggesting that tribunals may disregard the principles underpinning the HHSRS. It went on to say this (in paragraph 55):

> "… when confronted by cases in which enforcement action by councils is in issue, [tribunals] should not shy away from making their own assessment of the hazard and should not treat the figures given for national averages as compelling. Any such assessment must take account of those figures, but it must be reached in the light of the evidence given in relation to the facts of the particular case. Reasons must of course be given for it. The tribunal will bring its knowledge and experience to bear in evaluating the evidence and reaching its conclusion, and it will, importantly, bring common sense to bear in the judgement that it makes."

49. The Upper Tribunal went on to explain (at paragraph 56) that, in making a common sense judgment in relation to appeals, tribunals must still consider the seriousness of any hazard by reference to the HHSRS. Criticising the approach of the First-tier Tribunal on the facts of *Aldford Two*, the Upper Tribunal said:

> "But what [the FTT] ought to have done was to determine whether or not the evidence showed that there was a category 1 hazard, examining the council's assessment and the reasons for it and reaching a conclusion in the light of this and all other relevant material and giving reasons for its conclusion."

50. In the present case, therefore, the Tribunal must determine whether there is a category 1 lighting hazard in relation to all or any of the Premises. That requires us to examine the parties' competing HHSRS assessments, with a particular focus on the evidence about the appropriate range of likelihood of an occupant suffering harm as the result of the hazard (the parties agree that there is no reason to depart from the national average figures for the spread of harm). If and to the extent that we determine that there is any such category 1 hazard, the Tribunal must go on to decide what is the best course of action to take, and it should do this having regard to its experience and using common sense.

Harm and the hazard of Lighting

51. Before examining the parties' competing HHSRS assessments in any detail, we need to clarify two questions of principle which underpin the judgements on which the assessment depends. The first question is, in general terms, what constitutes "harm" for HHSRS purposes. The second question, which is specific to assessing the hazard of lighting, is whether harm can arise from the fact that the premises being assessed have no external view or outlook.

52. "Harm" is defined in chapter 2 of the Operating Guidance (see paragraph 43 above) as an adverse physical or mental effect on the health of a person, and includes both permanent and temporary harm. The

Guidance makes it clear that even the less serious harms (i.e., those within Class IV) will nevertheless be of sufficient severity that they will require medical attention and, therefore, be recorded in hospital admissions or GP records.

53. Turning to the second question, the Operating Guidance describes the hazard of Lighting in the following terms:

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

54. The Guidance states that causes of the hazard include the shape, position and size of windows and the layout of rooms, all of which may affect the amount of daylight, and that problems can arise where dwellings are fitted solely with skylights, affording no other view than the sky, which can lead to feelings of isolation. The health conditions which can be caused by inadequate light include depression and psychological effects caused by a lack of natural light or the lack of a window with a view. The Guidance recommends that, in addition to having sufficient natural light, the windows in a dwelling should be wide enough to provide for a reasonable view of the immediate surroundings – ideally, of open space. The Operating Guidance also states that the assessment of the hazard of Lighting should include the views from windows and the adequacy of both artificial and natural lighting for the dwelling as a whole. Relevant matters affecting likelihood and harm outcome are said to include window view (inappropriate shape and/or size of window preventing view of outside) and outlook (lack of reasonable view through living room windows).

55. It is thus very clear that the Operating Guidance envisages that deficiencies in outlook and view can lead to harm which should be taken into account when assessing the hazard of Lighting. Nevertheless, the Applicant argues that the Guidance oversteps the mark and should not be followed in this regard. This is based on the contention that a deficiency in outlook or view is not "a lack of adequate lighting". The argument is a bold one given that the Operating Guidance is statutory guidance; that it has been in force for nearly 20 years now; and that this aspect of the Guidance has seemingly not been challenged previously. In any event we do not consider the argument to be well-founded. Whilst the lack of an aesthetically pleasing view from a dwelling, of itself, cannot give rise to the hazard of Lighting, the lack of any outlook at all can. Outlook (or the lack of it) is associated with a lack of adequate lighting: as the Operating Guidance says, windows (even those which are adequate in themselves) can be obstructed externally by other buildings or by trees, reducing natural light levels within the dwelling. Insufficient open space outside a window will have a similar effect, quite apart from the potentially harmful effect of having little or no view from the dwelling. We therefore consider that Mr Armstrong was right to assess the hazard of Lighting in accordance with the Operating Guidance,

including taking account of what it says about outlook and view. Indeed, we note that the Applicant's own expert, Mr Lord, has done likewise.

Assessing the hazard in relation to the Premises

56. The Prohibition Orders themselves do not reveal the individual HHSRS scores or calculations on which the Respondent's hazard assessments were based. That information was disclosed during the course of these proceedings, however, and the Applicant has also commissioned its own HHSRS assessments from an independent Chartered Environmental Health Practitioner, Richard Lord. The outcomes of the competing assessments are summarised in the following table:

Lighting Hazard Assessments				
	LHA		**Applicant**	
Premises	**Score**	**Band**	**Score**	**Band**
Flat 101, Rm 3	5889	A	590	D
Flats 110-114	1963	C	184	F
Flat 115	5889	A	184	F

57. The explanation for these significantly contrasting outcomes is to be found in the differing views taken by the parties' respective assessors to the likelihood, during the subsequent period of 12 months, of an occupant suffering harm as the result of the hazard. According to the Operating Guidance, the national average likelihood of such harm in respect of all dwelling types is 1 in 50,825. Mr Armstrong clearly took the view that all of the Premises were far from average in this regard: for Flats 110-115, he adopted the range of ratios of likelihood of 1 in 4 to 1 in 2.5 (for which the HHSRS representative scale point is 3). For Flat 101, Room 3 and Flat 115, however, Mr Armstrong concluded that the likelihood of harm was even greater: for these two flats he adopted the range "More likely than 1 in 1.5" (for which the RSP is 1).

58. Mr Lord also took the view that it was appropriate to assess each of the Premises on the basis that the likelihood of harm is greater than the national average for all dwellings. He grouped Flats 110-115 together for this purpose, adopting the range of ratios of likelihood of 1 in 42 to 1 in 24 (for which the RSP is 32). Mr Lord concluded that the likelihood of a harmful occurrence was greater in relation to Flat 101, Room 3: for this he adopted the range of 1 in 13 to 1 in 7.5 (for which the RSP is 10).

59. As far as the spread of harm between Classes I – IV are concerned, both Mr Armstrong and Mr Lord took the view that there was no reason to depart from the average harm outcomes indicated in the Operating Guidance (so, for example, it was accepted that there is only a 0.1% chance that any harm resulting from the hazard would be Class I harm and a 90% chance that it would be Class IV harm).

60. To reduce the differences between the assessments made by Mr Armstrong and by Mr Lord to a statement of the obvious: Mr Armstrong concluded that there are category 1 lighting hazards (falling within Bands A or C) in all seven Premises assessed, whereas Mr Lord concluded that there were only category 2 hazards. The differences between their assessments turn entirely on the judgments they made about the likelihood of harm.

61. One thing that Mr Armstrong and Mr Lord did agree about was that an assessment of the likelihood of harm occurring as the result of the hazard of more than 1 in 4 would be required to result in a category 1 hazard falling within Band C at least.

62. The justification given for Mr Armstrong's assessments can be summarised, generally, as follows:

    62.1 Natural light in each dwelling is provided solely by means of the fixed-pane rooflight in the bedroom (or in each bedroom) which is recessed by approximately one metre into the ceiling, severely limiting the penetration of natural light. The glazing to the rooflights is also opaque, further restricting the amount of natural light penetrating into the dwelling.

    62.2 The positioning of the surrounding building elevations creates a canyon effect. As such, there is insufficient adequate open space outside the rooflights to permit adequate light penetration.

    62.3 The positioning of the rooflights does not afford the occupants any outlook whatsoever, and there is no easy access to outside space or fresh air. The result is that an occupier would have an oppressive sense of living in a subterranean dwelling.

    62.4 There is no separate living or dining room area, so the bedroom(s) would have to be used for a range of everyday activities.

    62.5 The separate bathroom and kitchen have no means of natural lighting and so artificial lighting is required for virtually all normal activities within these rooms.

    62.6 The lighting conditions in the dwelling are likely to cause psychological harm and to increase the risk of eye strain, Seasonal Affective Disorder and a reduction in vitamin D absorption.

    62.7 The assessments were aided by reference to worked examples relating to comparable properties.

63. Flat 101, Room 3 and Flat 115 have exacerbating features which, in Mr Armstrong's view, justify his elevated likelihood of harm assessments. As far as Flat 101, Room 3 is concerned, Mr Armstrong drew attention to the positioning of the surrounding building elevations, which completely

enclose the rooflight on all four sides, with the north, west and south elevations extending four storeys above. As such, the rooflight is only likely to receive direct sunlight for a brief period each day. Turning to Flat 115, Mr Armstrong noted the 'canyon effect' mentioned above in relation to other flats, but noted that all three surrounding elevations are within a couple of metres of the rooflight serving this flat, with the result that the sun will be obscured from the rooflights for a significant part of each day.

64. The justification given for Mr Lord's assessments can be summarised, generally, as follows:

64.1 The complete lack of a view of any description may impact on an occupant's wellbeing. However, not all occupants are likely to feel this way as it is likely to depend on the mental health of the individual concerned.

64.2 In Flats 110-115, the rooflight area is between approximately 10-13% of the bedspace floor area. The lighting levels in the bedspace areas are generally satisfactory to allow for studying without risk of eye strain, or the use of artificial lighting during most daylight hours.

64.3 The lack of windows in the kitchen area will require the use of artificial lighting for all daytime food preparation activities.

64.4 The Operating Guidance acknowledges that the evidence base is weak in relation to the correlation between inadequate lighting and adverse health outcomes. There is little available data on the mental health impact of a windowless room.

65. Mr Lord agrees that Flat 10, Room 3 has exacerbating features. He notes that the rooflight area in the room concerned is approximately 8% of the bedspace floor area and that the lighting levels in the bedspace area are lower than in the other flats due to the proximity to the rooflight of the surrounding external elevations and the smaller rooflight. He describes the lighting levels in the flat as "subdued" but says that they are likely to be generally satisfactory to allow for studying without risk of eye strain, or the use of artificial lighting during most daylight hours.

Relevance of worked examples

66. As noted above, Mr Armstrong referred to a number of worked examples which, he said, lend support to the judgements he made about the likelihood of harm in relation to the Premises. These worked examples (which are primarily intended as a training aid for HHSRS assessors) are in the form of peer-reviewed considerations of the risks associated with particular dwellings with serious lighting deficiencies.

67. Example 1 (prepared in 2004) concerns a two-bedroom basement flat, in a large 4-storey Georgian villa converted into self-contained flats,

which lies almost totally underground. Only the first bedroom has a normal window to the outside and this overlooks a narrow entrance trench. The living room is lit by a large skylight constructed over the adjacent light well which forms an extension to the room. The second bedroom is lit by borrowed light through a deadlight from the living room and through glazed doors from the adjacent front passage which is lit by a smaller skylight. The mechanically ventilated kitchen, bathroom, and inner hall have no means of natural lighting. There are no normal eye-level views from any of the rooms in the flat, other than a restricted view of the garden from the first bedroom. The likelihood of harm is assessed as 1 in 1 because only the first bedroom provides anything near the natural lighting conditions and outlook that one would expect from a dwelling. The living room has barely adequate light but no outlook, while all the remaining rooms are clearly devoid of both natural light and any outlook whatsoever. The example states that, apart from the difficulty of reading without artificial light, it is likely that most people would also suffer some psychological harm from living in the dwelling for a year or more.

68. Example 2 (prepared in 2007) concerns a one-bedroom basement flat in a Georgian building which has commercial use on the ground floor and bedsit accommodation on the floors above. Access to the flat is from within the building. The flat has no windows direct to the outside. The only natural light being via two opaque glass block light-wells in the public pavement on the west elevation which provides borrowed light into the living room and bedroom only. The flat is very dark and artificial lighting is required for almost all normal household tasks and activities. There is no outlook from the flat. The likelihood of harm is assessed as 1 in 2 because the whole flat lacks adequate natural lighting and no rooms have any outlook. As natural lighting levels are extremely low, artificial lighting is required for virtually all normal activities. However, there is some illumination provided by the borrowed lights. But the outlook from the accommodation is non-existent resulting in an extremely oppressive atmosphere which is likely to result in psychological harm. The lack of any alternative well-lit rooms means that exposure to the hazard is almost inevitable.

69. Example 3 (prepared in 2006) concerns a basement bedsit flat in a multi-occupied house built in 1947. It contains seven bedsits with two shared bathrooms and a ground floor shared kitchen. The basement bedsit is approached via a set of stone steps at the front of the house. Inside, the only window to the bedsit is sited just below the ceiling and to the right of the entrance door to the bedsit. It has no openable area and measures 750mm by 350mm. There is virtually no natural light in the bedsit, and artificial lighting is required for basic domestic activities. There is no outlook. The likelihood of harm is assessed as 1 in 2 because the natural lighting is wholly inadequate and the outlook very limited. Normal domestic activities could only be carried out under artificial light throughout the year. The example states that it is highly likely that the occupier would suffer some psychological harm from living in the dwelling for a year or more with such a poor outlook and with limited

natural light, and that those matters justify a major increase in likelihood to near certainty.

70. Mr Armstrong argues that the dwelling in Example 1 is actually "slightly better" than any of the Premises because it has two skylights and an additional normal window in a bedroom (with a partial view of the garden). He argues that the dwelling in Example 3 is also slightly better than the Premises because the basement bedsit benefits from a ground floor shared kitchen.

71. Mr Lord disagrees that the dwellings in any of the worked examples are "better" than any of the Premises. Indeed, he argues that they are worse because, in each case, virtually no daylight can penetrate into the dwelling. This is not the position in relation to any of the Premises.

72. Mr Lord made reference to a further worked example (Example 4, prepared in 2007) concerning a maisonette on the lower two storeys of a Georgian property. Most rooms have adequate natural lighting levels but poor to very poor outlooks onto courtyards. Likelihood of harm is assessed as 1 in 100 because, whilst the kitchen and lounge-diner have very poor outlook and natural lighting, this is ameliorated somewhat by reasonable levels of natural lighting in most other rooms and outlooks over recreation space. Whilst Mr Lord accepted that the dwelling in this example has better lighting than the Premises, he said that it illustrates that there can be a wider range of likelihood of harm in relation to this hazard.

Arguments and conclusions about likelihood of harm

73. In support of the Applicant's contention that Sheffield City Council's HHSRS assessments significantly overstate the likelihood of harm occurring within the relevant 12-month period, Mr Glenister made the following submissions:

    73.1 Mr Armstrong proceeded on the basis that "anything lower than the ideal [in relation to the Premises' lighting] was a harm". That is the wrong test for harm (as the above discussion shows).

    73.2 Mr Armstrong's assessments fail to take account of the views of those who live in the Premises. In fact, there have been multiple tenants, but none have complained – to the landlord or to the council – about the lighting in the Premises.

    73.3 In contrast, the assessments made by Mr Lord do take account of the views of occupiers. His assessments are reasonable and justified and should be preferred to those of Mr Armstrong.

    73.4 The dwellings in the worked examples relied on by Mr Armstrong are not comparable with the Premises as they have little or no natural light.

73.5 The council's own process in this case casts doubt on whether the Premises were actually perceived as being seriously hazardous: from initial inspection it took ten months for the council to serve the first set of prohibition orders.

73.6 The daylight levels in the Premises are adequate, as evidenced by the fact that artificial lighting was not required when Mr Armstrong and Mr Lord made their respective inspections. As far as ADF values are concerned, most of the rooms assessed by Mr Jones comfortably meet the recommended minimum values for bedrooms.

73.7 The redevelopment of the Building was carried out in compliance with Building Regulations.

74. We do not accept the general proposition that a category 1 hazard cannot arise where there has been compliance with the applicable Building Regulations: a fact-specific assessment of a potential hazard may be carried out in any case using the HHSRS irrespective of whether a building control certificate has been issued. Nor do we accept that the limited evidence presented in this case about the views of the Premises' occupants is particularly instructive. None of individuals concerned had been asked to give witness evidence (by either party) and the views of occupants reported to us anecdotally by the Applicant had not been gathered in any systematic or comprehensive way. It would be unsafe to conclude from the fact that no complaints about lighting have been received that no occupant of the Premises has suffered harm as a consequence of a lack of adequate lighting. Moreover, we fail to see how an analysis of whether Sheffield City Council acted with expedition or otherwise in serving the Prohibition Orders assists us to form a view on the critical question in this case: in respect of each of the Premises, what is the likelihood, during the relevant 12-month period, of an occupant suffering harm (of sufficient severity that they will require medical attention) as the result of the hazard of Lighting?

75. The HHSRS assessments of both Mr Armstrong and Mr Lord were based almost entirely on their subjective judgements about the adequacy of the lighting in the Premises. No light meter readings were taken by either assessor, for example. Subjective judgements inevitably play a part in the assessment process (and, indeed, we discuss our own subjective impression of the Premises below). However, in this case we also have the benefit of more objective evidence in the form of the Internal Daylight Report prepared by Mr Jones (see paragraphs 22-28 above). That evidence was not available when Sheffield City Council decided to make the Prohibition Orders, of course, but it is precisely the kind of after the event evidence to which tribunals can and should have regard in determining appeals under the 2004 Act (see *London Borough of Waltham Forest v Hussain*).

76. The production of the Internal Daylight Report should also have caused the parties' own expert assessors to review the validity of their own

earlier assessments. It is apparent from Mr Armstrong's witness statement that he did indeed consider the contents of the report (and we discuss below what he says about selecting the appropriate ADF target value). However, Mr Lord admitted that, whilst he had received a copy of Mr Jones' report about a month before the tribunal hearing, he had not had time to review his earlier assessments in the light of its findings. This is particularly disappointing given the obvious relevance of the report's findings to matters about which Mr Lord gave expert evidence, and the fact that it is the duty of an expert witness to help the Tribunal on matters within the expert's expertise.

77. The relevance of Mr Jones' findings in the Internal Daylight Report are that they provide a means of ascertaining which of the Premises receive at least the minimum amount of daylight recommended by the Code of Practice for Daylighting and which of them do not (see paragraph 24 above). It must be stressed that a failure to meet this recommended standard does not necessarily result in a category 1 lighting hazard – for one thing, daylight received is only one aspect of lighting, and the measure takes no account of the presence or absence of any outlook from the premises concerned. Nevertheless, it does provide an objective measure of whether premises receive the amount of daylight which is generally considered acceptable and, if not, of how far they fall short.

78. However, the usefulness of this as a tool obviously depends upon the identification of the appropriate ADF value to use as a benchmark. Mr Jones adopted a value of 1%, on the basis that the rooms being assessed were bedrooms. He subsequently explained that this was because drawings provided to him clearly identified the rooms assessed as bedrooms and this designation was supported by the furniture present within the rooms when the daylight survey was carried out. Mr Armstrong took issue with the adoption of a 1% benchmark, however. He pointed out that none of the Premises have separate living rooms and that it is therefore highly likely that bedrooms would be used in a dual (living room/bedroom) capacity, and so should be benchmarked against the higher target ADF value of 1.5%, applicable to living rooms. We agree: given the absence of any other living accommodation for occupants of the Premises within the flats or the wider Building, it is inevitable (as Mr Lord accepted in his oral evidence) that the rooms concerned will also be used for daily living activities. They should be assessed accordingly.

79. It can now be seen (by reference to the table at paragraph 27 above) that Flats 110, 111 and Room 1 in Flat 112 achieve ADF values of more than the minimum recommended in the Code of Practice for Daylighting, but that the rest of the Premises fall below that recommended minimum by varying amounts. For Flat 113, for example, the amount of the shortfall is marginal. On the other hand, for Flat 101, Room 3 (which achieved an ADF value of just 0.35%) the shortfall is very substantial.

80. It is appropriate at this point to consider how all of this translates into reality. The Applicant's position is that, notwithstanding the low ADF

values achieved by some of the Premises, the reality is that all of them have sufficient daylight for everyday living. It was noted, for example, that it had been possible for the original HHSRS inspections to be carried out without turning the lights on in the bed/living spaces. Sheffield City Council, on the other hand, clearly disagree that any of the Premises have adequate daylight.

81. The impression we gained from our own inspection visit is that there is a marked difference in daylight levels between Flat 101, Room 3 and the bed/living spaces in any of the other flats concerned. Whilst we also perceived some differences in daylight levels between Flats 110-115, these differences were much less pronounced. Flat 101, Room 3 was very gloomy indeed: whilst it was possible to see in the room without turning on the artificial light, we consider that an occupier would probably need to do so to carry out most daytime living activities comfortably. We do not share Mr Lord's view that the lighting was merely "subdued": the room was quite dark and, coupled with the lack of any outlook, this made it feel subterranean and oppressive.

82. At the other end of the scale, our impression was that the bed/living space in Flat 110 has a reasonable amount of daylight. As far as light levels are concerned, it felt comfortable to be in that space without any artificial lighting (even on an overcast November afternoon). This is perhaps unsurprising given that the ADF value of 2.67% achieved by Flat 110 is more than 7.5 times that achieved by Flat 101, Room 3. The daylight levels in Flats 111, 112 and 113 felt broadly similar (although the fact that there is a smaller rooflight in one of the rooms in Flat 112 was noticeable). However, in Flats 114 and 115, we were able to sense a modest diminution in daylight levels. However, we did not perceive a difference in daylight levels between the bed/living space in Flat 114 and that in Flat 115. Although that might appear surprising given the different ADF values achieved by these spaces, that numerical difference is attributable to the fact that Flat 115 is a bedsit and so the calculation takes into account the daylight level in the open-plan kitchen as well as the bed/living area. In reality though, the bed/living space in Flat 115 does not feel darker than the bed/living rooms in Flat 114.

83. In common with Flat 101, Room 3, there is no external outlook afforded to occupants from any of Flats 110-115. Again, this feels quite oppressive, but our impression is that the detriment of having no outlook is ameliorated to some degree for these flats by the fact that their bed/living spaces feel significantly lighter.

84. Taking both daylight levels and lack of outlook into account, none of the Premises have adequate lighting in our view. The likelihood of that deficiency causing harm to any occupier within a 12-month period must be quantified numerically in relation to each of the Premises for HHSRS purposes, and we now turn to the worked examples for assistance in this regard.

85. We begin with Flat 101, Room3, which clearly presents the most serious issues as far as lighting is concerned. The ADF value achieved by the room in question falls far short of the 1.5% minimum recommended in the Code of Practice for Daylighting for a combined bed/living room, and the lack of daylight is compounded by the absence of any view or outlook from the room and also by the fact that an occupant would not easily be able to access any outside space for recreation. We do not consider that the deficiencies in lighting are entirely comparable to those in any of worked examples 1 – 3 (at paragraphs 67 – 69 above) because Flat 101, Room 3 does receive some (albeit limited) direct daylight. The premises which are the subject of those worked examples all either rely on borrowed daylight and/or have virtually no daylight. Flat 101, Room 3 is 'better' than any of those premises but, in our view, not much better. The likelihood of harm for Flat 101, Room 3 should therefore be less than the 1 in 1 or 1 in 2 figures adopted by the authors of the worked examples, but we consider that it would fall within the range of ratios of likelihood of 1 in 4 to 1 in 2.5 for HHSRS purposes (for which the RSP is 3).

86. Flats 114 and 115 are both significantly better than Flat 101, Room 3 in terms of daylighting. However, they again fall short of the minimum recommended ADF values and have the same deficiencies in terms of lack of outlook. We consider that the appropriate likelihood of harm in respect of each of these flats would fall within the range of ratios of likelihood of 1 in 13 to 1 in 7.5 (for which the RSP is 10).

87. The lighting in each of Flats 110 – 113 is better still. Each flat achieves ADF values which either exceed the recommended minimum or which undershoot it by only a modest amount. Whilst the lighting deficiencies in each of these Premises are more serious than the ones in worked example 4 (at paragraph 72 above) because of the lack of any outlook, we consider that the appropriate likelihood of harm in respect of these flats would fall within the range of ratios of likelihood of 1 in 42 to 1 in 24 (for which the RSP is 32).

88. Accepting (as we do) the parties' view that there is no justification for altering the spread of harms from the national average, it follows from these conclusions that we arrive at the following HHSRS Lighting hazard assessments for the Premises:

Flat	RSP	Score	Band	Category
101, Room 3	3	1963	C	1
110	32	184	F	2
111	32	184	F	2
112	32	184	F	2
113	32	184	F	2
114	10	590	D	2
115	10	590	D	2

Appropriate enforcement action

89. It follows from the above findings that the appeals against the Prohibition Orders relating to Flats 110 – 115 must be allowed: only category 2 Lighting hazards exist in those flats and so Sheffield City Council were not entitled to make prohibition orders in respect of them under section 20 of the 2004 Act.

90. However, as we have concluded that there is a category 1 Lighting hazard in Flat 101, Room 3, it is necessary to consider the Applicant's alternative ground of appeal in relation to the remaining Prohibition Order. The Applicant argues that the council should not have responded to this hazard by making that Order. The reason, according to the Applicant, is that the best course of action in relation to the hazard is serving either an improvement notice under section 11 of the 2004 Act or a hazard awareness notice under section 28.

91. An improvement notice is a notice requiring the person on whom it is served to take such remedial action in respect of the hazard concerned as is specified in the notice.

92. A hazard awareness notice is a notice advising the person on whom it is served of the existence of one or more hazards on the residential premises concerned which arise as a result of a deficiency or deficiencies on the premises. The notice must obviously identify the hazards and deficiencies concerned and give details of any remedial action which the local housing authority consider it would be practicable and appropriate to take. However, the recipient of the notice is not obliged to take the recommended remedial action (for that reason there – and in contrast to an improvement notice – is no right of appeal against a hazard awareness notice).

93. Mr Glenister argued that serving a hazard awareness notice would be most appropriate in this case because: a) a number of tenants have resided in the Flat 101, Room 3 happily; b) the flat provides residential accommodation in a sought after part of the city centre, close to amenities, and therefore occupants are less likely to spend long periods in it; and c) the council's concerns could be addressed by including actions in the notice, such as limiting the duration of tenancies or by requiring an in-person viewing before letting.

94. Dealing first with the possibility of serving an improvement notice, it is plain that this would not offer a viable solution to the lighting hazard in Flat 101, Room 3. Mr Jones offered the opinion that little could be done to increase the amount of daylight penetrating into the room, and this has not been disputed. As far as the lack of any outlook is concerned, the only suggestion put forward was for the replacement of the translucent glass in the rooflight with clear glass. Mr Armstrong voiced concerns about the privacy of occupants of the room, given the way in which the rooflight is overlooked by surrounding premises. Whether or not this is accepted as a concern, it does not seem to us that replacing the glazing

with clear glass would do much to improve the outlook: the view would be of the sides of the lightwell above the Premises, which again may feel oppressive.

95. Nor are we persuaded that serving a hazard awareness notice would be an appropriate response to the lighting hazard in Flat 101, Room 3. Paragraph 5.39 of the Enforcement Guidance (see paragraph 43 above) states that, whilst a hazard awareness notice is a possible response to a category 1 hazard, this is likely to be the case only in circumstances where works of improvement, or prohibition of the use of the whole or part of the premises, are not practicable or reasonable. That is not the case here. Paragraph 5.21 of the Enforcement Guidance, on the other hand, states that one of the situations in which a prohibition order is appropriate is where the conditions present a serious threat to health or safety but where remedial action is considered unreasonable or impractical for cost or other reasons. In the case of Flat 101, Room 3, we are satisfied that the lighting hazard does present a serious threat to health or safety and that there is no effective way of addressing that threat other than by prohibiting its use for human habitation. A hazard awareness notice would not reduce the risk, even if it included conditions of the kind suggested by Mr Glenister. Such conditions would be advisory only and would not be enforceable. We accept that good retail amenities are on hand nearby in the city centre. However, their proximity does not make the risks associated with living in the flat acceptable. Nor is it relevant, in our judgment, that the Building is located in an area of high demand for rented accommodation.

Administrative expenses and tribunal fees

96. Section 49 of the 2004 Act gives a local housing authority power to make such reasonable charge as they consider appropriate as a means of recovering the expenses incurred in determining whether to make a prohibition order and in serving copies of the order on persons as owners of the premises. In the present case, each of the seven Prohibition Orders served by Sheffield City Council was accompanied by a separate demand for the payment of £285.56 in this regard (£1,998.92 in total).

97. Section 49(7) provides that, where a tribunal allows an appeal against the underlying prohibition order, it may make such order as it considers appropriate reducing, quashing or requiring the repayment of any such charge.

98. In the present case, we have allowed the appeals against the six Prohibition Orders relating to Flats 110 – 115. We therefore consider it appropriate to quash the six demands for payment which accompanied them.

99. Finally, we consider it appropriate to order the reimbursement of tribunal fees in exercise of the discretionary power conferred by rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. We note that the Applicant has paid application

fees totalling £700 in these proceedings, together with a hearing fee of £200. We therefore order the Respondent to reimburse the £100 application fee for each of the six successful appeals, plus a proportionate part of the hearing fee.

OUTCOME

100. For these reasons, the Prohibition Order relating to Flat 101, Room 3 is confirmed and the appeal against that Order is dismissed. However, the appeals against the other six Prohibition Orders are allowed, and those Orders are quashed.

101. We make the ancillary orders explained above in relation to administrative expenses and tribunal fees.

Signed: J W Holbrook
Judge of the First-tier Tribunal
Date: 30 November 2023