



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

Case reference: MAN/30UH/HPO/2023/0014

Property: The Girvan Hotel 30 West End Road,
Morecambe, Lancashire, LA4 4DL

Applicants: Mr S.Shah & Mrs S.Shah

Respondent: Lancaster City Council

Type of Application: Housing Act 2004 – Schedule 2,
Paragraph 7(1)

Tribunal Members: Judge J.M.Going
J.Gallagher MRICS

**Date of
Hearing:** 4 July 2024

Date of Decision: 12 July 2024

DECISION

The Decision and Order

The Tribunal confirms the Prohibition Order and the Appeal by the Applicants is therefore dismissed.

Preliminary

1. By an Application (“the Appeal application”) dated 11 November 2023, emailed and received on 17 November 2023, the Applicants (“Mr and Mrs Shah”) appealed to the First-Tier Tribunal Property Chamber (Residential Property) (“the Tribunal”) under paragraph 7(1) of Schedule 2 of the Housing Act 2004 (“the Act”) against the Respondent (“the Council”)’s issue of an Prohibition Order dated 24 October 2023 (“the Prohibition Order”) relating to the property.
2. The Tribunal gave Directions on 23 February 2024.
3. Both parties provided a bundle of relevant documents including written submissions which were copied to the other.
4. Arrangements were made for the property to be inspected at 10am on 4 July 2024 followed by a hearing later the same day at Lancaster Court.

The Property

5. The Girvan Hotel is a large traditional 4 storey stone built mid-terraced property close to the sea front at Morecambe, originally constructed over a hundred years ago. It is situated in a street comprising mainly similar properties that are mostly hotels, boarding houses or flats/bedsits probably built in the Victorian era. It has solid stonework with bay windows to the front, rendered brickwork to the rear and a traditional slate roof.
6. It is briefly described in the Appeal application as a “14-bedroom guesthouse/hotel including a basement currently undergoing renovation”. Inspection reveals that there are more bedrooms (with numbering continuing to 16) but that some may be unused.
7. Although not currently functioning as a commercial hotel this is clearly how the property was intended to be used when last operated as a business. The general state of neglect and disrepair supports the view that it is several years since this was a destination that would attract paying guests.

Facts and Chronology

8. The following timeline and events are confirmed from an analysis of the papers and have not been disputed.

18 October	The registered title to the property confirms its purchase by
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2007	Mrs Shah for £120,000.
11 October 2023	Following a complaint as to its condition by an occupier, Mr Hermi, the property was visited by Ms Drury, a Senior Environmental Health Officer, and Mr Winiarski, a Housing Technician, both employees of the Council.
18 October 2023	A formal inspection of the property was undertaken by Ms Drury, Mr Winiarski, and Mr Stainton and Mr Molloy, 2 Enforcement Officers from Lancashire Fire and Rescue Service (“LFRS”). Mr Shah was also in attendance.
18 October 2023	Mr Stainton on behalf of LFRS wrote to Mr and Mrs Shah confirming (inter alia) “I am of the opinion that some people are at risk in case of fire. You have however reassured me that you will make necessary improvements. You have an ongoing duty to ensure the safety of people. The attached schedule sets what you need to do...”
24 October 2023	The Prohibition Order was served.
17 November 2023	The Appeal application was made to the Tribunal.
11 January 2024	Mr Stainton visited again at the request of Mr Shah to “look at progress on works that had been undertaken”, following which a further letter was written.
7 March 2024	The property was reinspected by Ms Drury and Ms Skelton, a graduate planning enforcement officer with the Council.
May 2024	The property was reinspected by Ms Drury and Mr Stainton, and thereafter revisited by Mr Stainton and his line manager Mr Dicketts.
20 May 2024	Mr Stainton on behalf of LFRS wrote to Mr and Mrs Shah again confirming “the opinion that some people are risk in case of fire...”. The attached schedule referred under 14 numbered headings to what was required, with timescales for set for completion ranging from immediately and ASAP to 3 months.
21 May 2024	Mr Stainton on behalf of LFRS issued an Alterations Notice under the Regulatory Reform (Fire Safety) Order 2005 confirming its opinion “that the premises constitute a serious risk to relevant persons if the third floor of the premises is used for anything other than a storage area”.

The Contents of the Prohibition Order

9. Clauses 2 and 3 confirmed that “This Order prohibits the use of the building comprising all floors at 30 West End Road, Morecambe, Lancashire LA4 4DL from being used for any habitable purpose” and that the Order would become operative 28 days after it was made, unless appealed.

10. For ease of reference, its two schedules have been reproduced in the Schedule to this Decision. The first schedule refers to the Council having identified 3 separate Category 1 hazards under the headings of Excess Cold, Falling between levels, and Damp and Mould as well as 5 further Category 2

hazards under headings of Food Safety, Personal hygiene, sanitation and drainage, Fire, Electrical hazards, and Falling downstairs.

11. The second schedule specified the remedial action which it considered, if taken, would result in the revocation of the Order, stating that for the property to be reoccupied as a dwelling or used as a HMO it must be converted in strict accordance with current Building Regulations and the Council's HMO standards.

12. The Prohibition Order also set out in detail the rights of appeal.

13. Ms Drury following the reinspection of the property on 7 March 2024 appended various notes as to what had or had not changed in the intervening period to a copy of those schedules. Those notes have also been reproduced in the Schedule to this Decision in a bold and italicised font.

The Statutory Framework and Guidance

14. The Act introduced a new scheme for the assessment of risk in residential buildings and for the enforcement of appropriate housing standards by local housing authorities. Risk is assessed by reference to a Housing Health and Safety Rating System (HHSRS). Enforcement Action is mandatory where the level of risk to health is high enough to be categorised as a "category 1" hazard, and discretionary where less serious and categorised as "category 2". Local housing authorities have specific duties, notably to keep under review housing conditions in their area, to inspect premises to see whether category 1 or 2 hazards exist, and to take appropriate enforcement action in the event of category 1 hazards being identified.

15. The duty of a local authority to inspect a property is set out in Section 4 of the Act. Inspections are governed by the Housing Health and Safety Rating System (England) Regulations (2005/3208) which by reg.5 provide that an inspector must have regard to any guidance for the time being given under Section 9 of the Act in relation to the inspection of residential premises.

16. The relevant Guidance is the Housing Health and Safety Rating System – Operating Guidance ("the Operating Guidance") and the Housing Health and Safety Rating System - Enforcement Guidance ("the Enforcement Guidance") issued by the Secretary of State under Section 9 of the Act in February 2006. Authorities must also take it into account in assessing hazards: see Section 9(2).

17. Section 5(2) of the Act defines "appropriate enforcement action" by reference to various courses of action, which can include serving an improvement notice, making a prohibition order or serving a hazard awareness notice. If only one course of action specified within subsection(2) is available to the authority in relation to the identified hazard or hazards, it must take that course of action. If two or more courses of action are available, it must take the course of action which it considers to be the most appropriate of those available. By section 7 of the Act the authority has a similar power in respect of category 2 hazards.

18. A prohibition order (as more particularly referred to in Sections 20 to 27 of the Act) is an order imposing a prohibition (or prohibitions) on the use of premises, where no management order is in force. A prohibition order may prohibit the use of the dwelling or HMO: Section 20(3) and (4), for all purposes, or for a particular purpose: section 22(4), by reference to a particular number of households or persons, or particular descriptions of persons: section 22(5).

19. A “relevant person” may appeal to the Tribunal against a prohibition order (Schedule 2, paragraph 7 of the Act).

20. If an appeal is brought in time, the order is not operative whilst the decision on the appeal is pending (Section 24 (5) and Schedule 2 paragraph 14).

21. Paragraph 8 sets out as specific grounds of appeal that the best course of action respect of which the order was made is serving an improvement notice, serving a hazard awareness notice, or making the demolition order. These specific grounds of appeal do not limit other grounds of appeal.

22. The appeal is by way of re-hearing and accordingly the Tribunal must consider the state of the property as at the time of the hearing. The appeal may be determined having regard to matters of which the authority was unaware (paragraph 11(2)).

23. The Tribunal may confirm, quash or vary a Prohibition Order (paragraph 11(3)).

Written submissions

24. Because of the extent of the paperwork, which is on record and which the individual parties have access to, it would be superfluous and, in the Tribunal’s opinion, counter-productive to attempt to set out its full detail or every submission and response in this decision.

25. The Tribunal has instead highlighted those issues which it found particularly relevant to, or that help explain, its decision-making. The same comment applies to the evidence and submissions presented during the inspection and hearing.

26. The Council stated that its reasons for deciding to make the Prohibition Order were: –

“The building was in poor repair with multiple category 1 and 2 hazards. There was evidence that the premises was being used as a dwelling rather than a hotel premises. During inspections it was observed at least three families have been using the hotel as permanent accommodation for prolonged periods of time. The hotel isn’t available for booking to the general public and there is a lack of amenities you would expect from a hotel such as a clearly defined reception with a receptionist, cleaning staff, provision of meals and staff.

The premises is in such poor repair with extensive hazards throughout as to be uneconomical to carry out all of the required remedial actions. As the cost of the improvement works is likely to be prohibitive and/or impractical to achieve, then prohibiting the use of the premises is considered the most appropriate course of action until the works on schedule 2 are carried out. For the property to be used as a dwelling, it will require reconfiguration and Building Regulation approval and the necessary Planning Permission". Its reasons for deciding on a Prohibition Order rather than any of the other available enforcement actions under the Act were stated as being in respect of "*Improvement notice*

The premises is in such poor repair with extensive hazards throughout as to be uneconomical to carry out all of the required remedial actions to bring the premises to a habitable standard.

The use of the building as a dwelling is not lawful because no part of the building benefits from the necessary Planning Permission to be occupied as a dwelling.

There has been no attempt to convert any part of the premises into a dwelling or House in Multiple Occupation.

Therefore, any part of the property that is to be used as a dwelling will require properly designing and the necessary Planning Permission and Building Regulations approval and supervision before it is lawful to be used for any habitable purpose.

Emergency remedial action

The hazards encountered do not pose an imminent risk to the health and safety of the occupiers and visitors to the property so the taking of emergency remedial action or the making of an emergency prohibition order is not appropriate in this case.

Hazard awareness notice

The enforcement guidance considers that a hazard awareness notice may be a reasonable response to a remote or minor hazard. There are significant category 1 and 2 hazards identified at this property so is therefore considered not an appropriate course of action. This would also result in the occupants continuing to be exposed to the hazards.

Demolition/clearance order

This would involve the demolition of the premises. A demolition order is not considered an appropriate course of action in this situation as this is a terraced property and as such any clearance or demolition would have a substantial impact on neighbouring properties".

27. Mr and Mrs Shah's grounds for the appeal were initially summarized in their Statement of Case where it was said "We were already improving the property, and the hazards raised were ready being worked on before the Council's unannounced visit. The officer also witnessed the improvements and maintenance work during the Council's inspection... The local authority has been unhelpful in answering the queries and there has been a lack of communication and reasonableness from their side. We are therefore appealing the prohibition order as we are not sure on the next steps and ask that the Council engage in discussions and open lines of communications with us so that we can understand the issue and look to address these outside of the court ... the property is currently under improvement,

1. Brand new windows have been fitted to the building (as the Council would have seen during their observation), a new boiler has been fitted, and the certificate will be provided by the engineer in the next few days...
2. As part of the recommendations by the fire department, these are all being carried out. In the last few weeks, Chris from the Fire department has inspected the property and has confirmed that he is satisfied with the recommendations implemented. We trust this is sufficient.
3. I have attached the emergency lighting certificate that will go along with the smoke alarm and fire alarm test certificate I have already showed the Council...
4. Also attached is the EICR, with recommendations already actioned.....
5. The property has two separate units, the below basement flat is a separate dwelling to the business above. This is shown in the fact that the basement flat is Council tax and the above units are business rates. I cannot see that this has been considered by the Council.
6. The Council itself allows other B&B providers to hold tenants longer than a 12-month period in temporary accommodation, we would like to know on what basis the Council allows this without asking the Bed and Breakfasts and Guest Houses to apply for a HMO licence....
7. The property in question has had no changes to the planning since the purchase. The neighbouring properties who hold the same status as the property in question have not been penalised the same way by the Council. After the Council's visit, I received an email from the Planning Council team (14 March 2024) to confirm they have no intention to enforce the change of use of the property from a guest house.

The basis on this appeal relates to the fact that I am simply not open for the public (as evident in having no website, as the local authority mentioned). The people staying in the property are a caretaker's family, my own family and friend, whom I receive no rent from.

No rooms are being used for permanent accommodation as stressed on several occasions to the Council.

Should the Council's application succeed, I will be content to ask those residing in the property to leave. It will then be the Council's responsibility to re-house the family and individual urgently as they will become homeless all of whom are vulnerable. I assisted the residents in good faith.

The action taken by the Council is contradictory to their objective of ensuring more accommodation across the county due to the increased homelessness. The property remains a guest house and not an HMO as the Council have claimed. Sections 20 and 21 therefore are not applicable.

The maintenance and improvements of the property continue to occur as and when required to ensure it is in good state. Substantial financial investment is required in its upkeep which means that some improvements require time. If the Council would like to assist in the speed of this I would be grateful if they could reach out and inform us of ongoing grant programmes that could assist. I urge the Council to reconsider their position and instead engage in communication with us such as how adequate kitchen facilities can be categorised and help us understand the root cause so that we can address the matter without the extra costs of court proceedings....

I have worked on schedule 1 and schedule 2 as high-priority”.

28. Mr and Mrs Shah's bundle of papers included their statement of case, emails and copies of various certificates relating to the electrical installation, gas appliances, emergency lighting, the fire alarm, and fire extinguishers.

29. The Council's bundle of papers included its statement of case, photographs, official copies of the registered title to the property, details of Council tax records, emails and correspondence, notices, together with witness statements from Ms Drury, Mr Winiarski, Ms Skelton and Mr Stainton, copies of letters to Mr and Mrs Shah from the LFRS dated 18 October 2023 and 20 May 2024 and LFRS' Alterations Notice dated 21 May 2024.

30. The witness statements referred to the different visits and inspections noted in the timeline. Ms Drury's was supported by contemporaneous photographs as to the property's condition.

31. Both Ms Drury and Mr Winiarski averred that at their first visit on 11 October 2023, there were 10 persons present, being the Roshan family- husband, wife, baby and mother-in-law; the Hermi family- Husband, wife, and four children ranging from baby to teenager; and an unnamed tenant in room 10 who confirmed he paid rent directly to Mr Shah. Each family stated that "it was their only place of residence with no permanent residence elsewhere". Mr Hermi "told us that he lived at the property permanently with his wife and three children and that they had been residing there for a few years.... he explained that he didn't pay rent but he did odd jobs and looked after the building for Mr Shah. He then told us he was a person paying the gas and electric bill although he couldn't afford it as this is a very large building....". The witness statements go on to refer to it being evident from all subsequent inspections that the Hermi and Roshan families have remained resident in the property. It is also acknowledged that a Mr Case resides in the basement flat and is responsible for its Council tax.

32. Ms Skelton's witness statement referred not just to her inspection of the property but to having had "several conversations with (Mr Shah) in which I received conflicting information about the current occupants"..... She particularly referenced a phone call on 5 March 2024 stating "He was not clear on how many residents were staying property, nor how many rooms were available... He did state that there are no written tenancy agreements, and that (he) does not always charge rent ... I was also informed... that residents find out about the property by word-of-mouth". She confirmed her opinion that the property "is being operated as a House in multiple occupation".

33. Ms Drury averred to further consideration after the inspection in March 2024 whether it was then appropriate to vary the Prohibition Order, deciding that it was not because of the outstanding category 1 and 2 hazards, there being no HMO licence in place and no planning permission sought for use as a dwelling.

The inspection and the subsequent hearing

34. The Tribunal met at the property Mr Shah and 4 children, Ms Drury, Mr Winiarski, and Mr Stainton. Mr Shah confirmed that his children represented and were there to support him. They, together with Ms Drury and Mr Stainton were all in close attendance throughout the inspection of both the inside and outside of the property, over approximately 1½ hours, and helpfully pointed out the various changes and works effected in the last 8 months.

35. The following are extracts from Mr Gallagher's notes: –
"The property comprises –

Semi-Basement with commercial kitchen, guests dining room, boiler room and a 2 bedroomed flat (subject to Council Tax). The basement gives access to the rear yard which is a means of escape from fire and is where the bins are located to be used by all occupants.

Ground Floor entrance accessed via several steps. Reception, guests sitting room, bar with small lounge (both not in use and usually locked).

First Floor with 3 double bedrooms and 3 single bedrooms. Each room has a wash basin and a radiator. One room is used as a shared kitchen and has a sink unit, fridge and microwave (carpeted floor). There are shared shower facilities.

Second Floor with 2 double bedrooms with radiators. One of the bedrooms has a wash basin and the other an en-suite facility. There are 2 shared shower rooms and a wc/whb.

Third Floor with four attic bedrooms each with a wash basin. There are no radiators on this floor.

Overall Condition of this property is poor with damp and mould evident in some bedrooms. Although there has been some attempt to remedy this (repairing leaking gutters and re-painting) and to tackle issues such as replacing hazardous single-glazed windows the overall approach to property maintenance is haphazard and reactive rather than planned and timebound. Shared shower facilities are inadequate and unhygienic and alike with the rest of the property no one looks to be tasked with the basic requirement of keeping shared or common areas clean.

The washing facilities in each bedroom are very basic, in poor condition and need replacing.

There is only one central heating boiler serving all rooms with heating and hot water and as noted above the third floor has no radiators. The radiators in place are mostly in poor condition, rusty and in need of replacement. Almost all radiators have no thermostatic valves fitted and there is no mechanism to regulate the heating on a room-by-room basis. As a result, some rooms have a wall-mounted electric heater, or portable heater regulated by whoever occupies the room at the time.

There is only a partial handrail from the ground floor to the basement and from the second floor to the third floor. As the basement kitchen is available for cooking and is the only fully equipped kitchen these deficiencies add to the risks associated with carrying hot meals from there to the rest of the building. All doors are fitted with self-closing mechanisms, some do not close properly and have inadequate fire seals. Some potential fire hazards, for example the bar and snug area, are mitigated by fitting door locks to restrict access. The same is true of certain bedrooms said to be used for storage or under

refurbishment. Great reliance therefore is placed on the behaviour of key-holders and others responsible for ensuring access remains controlled. The rear yard is on 2 levels; the upper part where the bins are usually stored is accessed via uneven steps with no handrail. The yard itself is unkempt and not usable as an outside space.

Actual Use of the building is evidenced in part by some bedrooms clearly being used for that purpose; it should be noted that no occupants were on site at the time of inspection. Some rooms are said to be in the process of being refurbished, some look like they may have been used in the recent past, but are said not to be used now, some are used as storage and some as makeshift kitchens.

Other than longer term occupation of various rooms by 2 families (and perhaps one other person) the extent of use appears to be somewhat fluid; it would be challenging to comment on a room-by-room basis as to what is happening now, in the immediate past or intended for the future. The rooms on the third floor for example are being refurbished but apparently are not intended to be used as bedrooms.

What is clear however is that the current use is not as an hotel or guest house. There are no staff, no facilities such as bed and breakfast, no rooms in a fit state to be let out, no obvious day-to-day management, an acknowledgement that the hotel is “closed” and no suggestion that current or former occupants have somewhere else they call “home”.

Every indication from the inspection, with the presence of children’s bicycles, baby walkers, fresh food, loose toiletries, goods and personal belongings beyond those used when travelling, and from the exhibited photographs, showing for example cots and clothes hung up to dry, is that the current use is residential. Looking to the near future it is inconceivable that that could change back to a commercial hotel operation in view of the state of the property. Multiple occupations by individuals or families as their place of abode, even in its present state, is regrettably not inconceivable”.

36. All those who had been present at the inspection reconvened at 1pm for the hearing at Lancaster Court, and were then joined by Mr Pearson, a solicitor employed by the Council.

37. The parties were thanked for their written submissions and evidence.

38. The Shahs’ request that “the Council should not be permitted to attend with a solicitor” and that Mr Pearson should be excluded from the hearing was denied. Objections had been raised because his details had not been placed on record until the day before, with it submitted that put the Shahs at a disadvantage. It was explained that the Tribunal is very well experienced in dealing flexibly with unrepresented parties, and would ensure that they were given a fair hearing including ample opportunity to state their case and put questions to any witnesses. It was stressed that the hearing was not an advocacy contest, and that at the centre of the Tribunal’s considerations would be the property itself.

39. In the event, the Shah children proved be more than able to present their parents case and began very helpfully by producing a written summary of their submissions. Having first referred to the background, that referred to

various ground for the appeal. Under the heading of procedural irregularities, submissions were made that the terms of the Prohibition Order were defective and not compliant with Section 22(e) of the Act, that the Council had failed to consider the risks associated with displacing and excluding vulnerable occupants, were compromising their rights under Article 8 of the European Convention on Human Rights (“Article 8”), and had failed to comply with the requirements of paragraph 5 and 6 of Schedule 2 to the Act in response to a request to revoke the Order. Further grounds for the appeal referred to an incorrect assessment based on erroneous assumptions that it would be uneconomical to carry out the required remedial actions, and what were seen as speculative rather than factual assessments, such as the boiler lacking sufficient capacity. The Shahs stated that “the assertion that the hotel is being occupied as an HMO is completely speculative”. Under the heading of fire safety it was also said “following advice from Mr Stainton, the appellants had since provided evidence of the completed remedial work on 4 June 2024”.

40. The matters raised in the Shahs’ written summary were all then discussed together with various matters previously highlighted in the papers or noted from the inspection.

41. It is not necessary to rehearse all that was said, but the following matters were of particular note: –

42. The Shahs confirmed that they live in Middlesex (being over 250 miles away from the property); that the children have assisted and/or written emails within the papers; that they have a local property manager, Joseph, acting as a friend rather than an employee, and he is able to regularly test the fire alarm; that Mr Hermi and his family have been living in the property for over 2 or 3 years; the Roshin, sometimes referred to as the Ulfat, family have been resident since September 2023; that the accounts for the electricity and gas for whole of the property are in Mr Hermi’s name, he is tasked with their payment, albeit, and here there was some ambiguity with the family’s different replies, the costs are later indemnified; that Mr Case occupies the basement flat and is responsible for its Council tax; the boiler is sufficient capacity to heat the whole of the property; that the kitchen in the basement was rarely used as such, if at all, by the occupants; and that whilst they readily agreed that works were still required, it was self-evident and there was clear evidence of ongoing improvements.

43. Mr Shah explained that the property had been bought in 2007 as an investment gift for his wife and had initially been operated by a friend as a hotel, but that the commercial operation had ceased after approximately 3 years. It was acknowledged that the property had then fallen into disrepair, but emphasised that the Council had not given, and were not giving, sufficient credit for the obvious improvements that were underway.

44. The Shahs repeatedly confirmed that the property was correctly classified as a hotel, but despite it being an aspiration to restore it as a viable commercial and working hotel they could and would not be drawn on any timescale as to when that might be achieved, not least because of the costs involved. It remained an investment. They were adamant that it should not be

now or in the intervening period be classed as an HMO, repeatedly confirming that no rent was paid by the present occupants, described as guests.

45. Ms Drury and Mr Winiarski reaffirmed the contents of their witness statements.

46. Ms Drury produced copies of her HHSRS scores which were reviewed closely. When discussing “excess cold” she readily confirmed that the new windows would go to reduce her original score of 3275, but that it remained as a category 1 hazard. The Shahs had said that any questioning of the capacity of the boiler was speculative, and affordability not the issue. Mr Winiarski submitted that the present arrangements did not allow the individual households, to achieve and maintain an indoor temperature of 21°C (referred to in the Guidance as a healthy temperature) noting particularly that the occupants of individual rooms did not have the means to regulate temperatures other than by resorting to electrical appliances, which are acknowledged as additional fire risk.

47. The Shahs said that the references in witness statements to various additional rooms having been occupied was speculative. Ms Drury justified her beliefs reiterating what she had seen; including various bedrooms with made up beds containing belongings and personal items; one of the showers with water on the floor and personal washing items within the bathroom suggesting it been used that morning.

48. Both Ms Drury and Mr Winiarski strongly refuted the assertion that the Council had not considered the rehousing needs of those occupying the property. Both described how the occupants had been offered various assistance, including helping them onto the Council house waiting list. Mr Winiarski related, some years previously, having helped Mr Hermi and his family to obtain Council accommodation, and that there had also been in recent months a new offer of the Council house, but which had been rejected.

49. The Shah family referred to the works undertaken, and changes made, and Mr Stainton and Ms Drury were able to identify, and readily acknowledged, progress and changes made since their last inspections. Nevertheless, both still clearly had a valid and understandable concerns and were not able to attest to the property yet being a safe and healthy place to live in.

50. Mr Stainton confirmed that whether he was being asked to judge the property by the benchmarks set for a hotel or an HMO, it still falls short of the appropriate standards. He voiced particular concerns that the restricted means of exit is not sufficiently fire resistant with adequate separation providing 30-minute fire protection. He confirmed, as he had done in writing, that because and self-evidently the present fire doors all of an age, many repaired, sometimes crudely, and not always properly fitting or returning to effect a proper seal, a comprehensive door survey is required. In short, whilst acknowledging that there had been progress, the property was not yet where he could safely sign it off.

The Tribunal's Reasons and Conclusions

51. The Tribunal has made its determination after careful consideration of the evidence, both written and oral, and crucially its inspection of the property.

52. It first considered the Shahs' procedural objections.

The objection to Mr Pearson representing the Council at the hearing

53. Rule 14(1) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("the Rules") confirms that a party may appoint a representative (whether legally qualified or not) to represent that party in the proceedings. The Council had complied with paragraph (2) of the same rule by sending the Tribunal and Mr and Mrs Shah written notice of his name and address. Paragraph (5) also states "at a hearing, a party may be accompanied by another person whose name address has not been notified under paragraph (2) but who, with the permission of the Tribunal may act as a representative or otherwise assist in presenting the parties case at the hearing.

54. It was confirmed at the outset of the hearing, in compliance with and under the discretion allowed by the Rules, that the Tribunal was content to permit both Mr Pearson to act as a representative of the Council, and also, as requested by Mr and Mrs Shah, their 4 children to act in concert as their representatives. The Tribunal is grateful for the assistance subsequently given by all those who participated.

The submission that the Prohibition Order did not comply with provisions contained in Section 22 (2)(c) of the Act and specify the remedial action which, if taken, would result in its revocation.

55. The Tribunal does not agree. Clause 7 of the Prohibition Order clearly confirms that the remedial action required is that specified in its second schedule. The Tribunal found that to be succinct, clear, comprehensive and sufficient. The property is not being used for its previously intended purpose. It is not adequately designed or set out for its present use. The Council clearly confirmed both in the Order and subsequent emails that for the present use to be continued conversion works would be required complying with set standards. There are multiple ways that could be achieved, which it is for Mr and Mrs Shah, rather than the Council, to decide upon if they wish to continue with its existing residential use. It is noted that the schedule confirmed that alternative works to those specified would be considered.

The submissions that the Council failed to consider the risks associated with excluding the vulnerable children from their accommodation, and the issue of the Prohibition Order

compromises the rights of occupants under Article 8 of the European Convention on Human Rights

56. The Tribunal did not find that to be the case.

57. The Tribunal accepts the oral evidence given both by Ms Drury and Mr Winiarski that the needs of the occupiers were fully considered.

58. Article 8 rights are not absolute, they are qualified. Article 8 rights do not give a right to housing. They refer to the right a person has to respect for their private family life, their home and their correspondence. Paragraph 2 of Article 8 states that there should be no interference by public authority with the right but specifically limits that when stating “except such as is in accordance with the law and is necessary in a democratic society in the interests of... public safety ... (or) for the protection of health. The Act, HHSRS, and prohibition orders are all lawful creations of statute passed in the interests of safety and for the protection of health. Public health and the individual safety of occupants, potential occupants, and others are at their core.

59. The Tribunal is clear that a public authority acting properly, in accordance with the Act and the Guidance, in response to manifest hazards posing a significant risk to individuals, correctly identifying the most appropriate form of enforcement action allowed or mandated under the Act would not be in breach of Article 8. The case of *Thurrock Council v Chapman and others [2021] EWHC 2210 (QB)* provides an example of the High Court confirming the enforcement of a prohibition order as a proportionate interference with the occupier’s Article 8 rights to protect them and the public.

60. It is also noted, in passing, that there is an inconsistency and tension between the Shahs stating in this context that the present occupants live in the property as their home (readily agreed by the Council and the Tribunal) and their other, often repeated, references to that occupation being “temporary” or as “hotel guests”.

The assertion that the Council had not properly responded to an email sent (on the same day as that whereby the Appeal application was lodged with the Tribunal) requesting the Council to revoke the Prohibition order.

61. The Tribunal found this submission, first raised at the hearing, to relate to a matter separate from, and thus not directly relevant, to its determination of the Appeal.

62. Nevertheless, for completeness and having had the opportunity to revisit the chain of emails, it is confirmed that the Tribunal finds the assertion to have been overstated. The email from Mrs Shah to Ms Drury on 17 November is not without ambiguity. It stated “most hazards have been addressed” and asked for advice on the next steps on revoking the order. Ms Drury replied, on the 20 November, both reiterating her previous advice as to the prudence of Mr and Mrs Shah seeking their own legal advice, and clearly

stating “the notice can be revoked if the terms are completely complied with”. There was reference in the same email to an invitation to an interview, and in subsequent emails to arranging suitable appointments for a further inspection, which were not taken up. It is also clear that Mrs Shah’s email was sent after her earlier email to the Tribunal submitting the Appeal application. Even if it was possible to construe the email to Ms Drury as a formal and sufficient application to then revoke the Prohibition Order and her response as not fully compliant with the provisions of paragraph 5 of schedule 2 to the Act (which the Tribunal does not accept) it is difficult to understand how Mr and Mrs Shah could have been prejudiced by not receiving a more formal response given that that only additional information that would have included was as to their rights to lodge and appeal against the Order which they had already exercised.

The assertion that Ms Drury and/or the Council have been uncommunicative or unhelpful.

63. The Tribunal found no evidence in the papers, at the inspection, or hearing to sustain that complaint. On the contrary, the email exchanges point to the opposite conclusion.

64. The Tribunal also found Mr Drury and Mr Winiarski to be open, straightforward and credible as witnesses and with their responses at the inspection and hearing, ready to acknowledge and give appropriate credit to changes and improvements made to the property in the eight months since their original inspections.

The substantive appeal

65. Having satisfied itself that none of the Shah’s procedural objections limited its ability to determine their Appeal, the Tribunal went on to consider whether it should confirm, quash or vary the Prohibition Order.

66. No issue was taken with the effective service of the Prohibition Order, and the Tribunal found that it was validly served and complied with all the technical requirements in the Act.

67. The Tribunal also made the following findings which are relevant to its decision making: –

- the property was designed, set out and presumably used, prior to Mr and Mrs Shah’s acquisition in 2007, as a commercial hotel;
- Section 1 (3) of the Hotel Proprietors Act 1956 offers a useful working definition of what is a hotel by stating that in that Act it “means an establishment held out by the proprietor as offering food, drink and, if so required, sleeping accommodation, without special contract, to any traveller presenting himself who appears able and willing to pay a reasonable sum for the services and facilities provided and who is in a fit state to be received”. Similarly, definitions of what constitutes a guesthouse refer to the offer and provision to general members of the public of overnight sleeping accommodation, meals, and daily cleaning of rooms;

- the present use of the property falls outside such definitions. It is not being used as a hotel. Indeed, Mr Shah confirmed that the property, after having been managed by a friend as a hotel two or three years after the purchase and fallen into disrepair has not been used as a commercial hotel or guesthouse for well over a decade;
- the property is now rightly regarded by the Council because of its present (and established) use as an HMO as defined in section 254 of the Act.
- Section 254 states that “a building or part of the building is a “house in multiple occupation” if – (a) it meets the conditions in subsection (2) (“the standard test”) and subsection (2) states:
“(2) A building or a part of a building meets the standard test if—
(a) it consists of one or more units of living accommodation not consisting of a self-contained flat or flats;
(b) the living accommodation is occupied by persons who do not form a single household (see section 258);
(c) the living accommodation is occupied by those persons as their only or main residence, or they are to be treated as so occupying it (see section 259);
(d) their occupation of the living accommodation constitutes the only use of that accommodation;
(e) rents are payable or other consideration is to be provided in respect of at least one of those persons’ occupation of the living accommodation; and
(f) two or more of the households who occupy the living accommodation share one or more basic amenities or the living accommodation is lacking in one or more basic amenities”.
- The Tribunal is satisfied from the evidence that has been presented that there are and have been various occupiers of the property occupying it as their only or main residence, who do not all form part of the same or a single household, and that rent or other consideration has been payable in respect of the least one of those persons occupation. The Shah family were adamant that rent as such is not paid and had not been paid, although confirmed that Mr Case paid the Council tax for the basement, and that Mr Hermi was billed for the gas and electricity used by the whole building. Mr Shah at the hearing denied that Mr Hermi acted as caretaker. This was contradicted by Ms Drury’s and Mr Winiarski’s evidence as to how Mr Hermi had described himself. Tellingly it was also contradicted in Mrs Shah’s email sent to Ms Drury on 5 November 2023 where she identifies the people living in the property as “a caretaker’s family, my own family and friend, who I receive no rent from” and again in Mr and Mrs Shah’s statement of case. As explained at the hearing “other consideration” can include a caretaker function, and paying bills which would otherwise be the obligation of the owner;
- HMOs by their very nature pose more risks than a single dwelling occupied by a single household.
- notwithstanding the finding that the property is an HMO, and as correctly identified by Mr Pearson in his submissions, the provisions for the enforcement of housing standards contained in Part 1 of the Act are not limited to HMOs but apply to all residential premises. The Guidance confirms they can, in appropriate circumstances, be applied to unoccupied as well as occupied properties, and nor are they only restricted to rented properties. The Operating Guidance also makes it clear that any form of dwelling can be

assessed under the HHSRS, whether it is self-contained or not, whether is contained within a larger building or not (see paragraphs 2.04- 2.06 and 5.02);

- accordingly, the Tribunal has had no difficulty in concluding that the property is properly subject to the Act, and that the Council was under a duty to inspect it following receipt of the complaint as to its condition.
- the property is in a poor state, and this has clearly been the case for some time;
- the present layout and design of the property and the facilities within it fall well short of providing appropriate and safe accommodation for the present use as the only or main residence for various occupants from different households sharing various common facilities;
- multiple hazards remain because of deficiencies attributable to design, construction and the maintenance of the property. As but some examples; the heating system is not sufficient, or adequately configured to allow individual occupants to maintain a healthy indoor temperature; multiple trip hazards remain with steep stairs some without adequate handrails; the rear yard is not a safe place, particularly for children and other vulnerable occupants...;
- there are continuing and unacceptable fire risks;
- the Tribunal has grave concerns as to the adequacy or veracity of the electrical certificates that have been provided to the Council, and accordingly as to the safety of the electrical installations within the property. Ms Drury averred, and it has not been challenged, that the first certificate referring to an inspection in November 2021 was from someone who did not appear on the appropriate registers to show that he was properly qualified. The second, dated 30 October 2023, exhibited by Mr and Mrs Shah gives no more comfort. Whilst it has ostensibly been provided by a Middlesex electrician, Adeel Maghal, whose firm is NICEIC registered, the certificate inexplicably refers to “the earth bonding in the shop being checked with measurements”. There is no shop on the premises, nor is there any evidence of there ever having been one. Mr Shah’s son tried to explain this as simply a typing error, which the Tribunal does not accept. The Tribunal found that the certificate cannot and should not be relied upon, and that it would be entirely reasonable for the Council to insist on the electrical installations being properly checked and certified as being satisfactory by reputable qualified contractor known to it.

68. Section 5(1) of the Act makes it clear that “if a local Housing authority consider that a Category 1 hazard exists on any residential premises, they must take the appropriate enforcement action in relation to the hazard.” The duty imposed is not discretionary, it is mandatory.

69. The Tribunal found that Ms Drury and the Council had acted both reasonably and appropriately in issuing the Prohibition Order and that the remedial works then specified in it were reasonable. The exhibited photographs attest to the various hazards then identified. The Council correctly identified that multiple occupants have been and are residing in the property.

70. The Tribunal reminded itself that paragraph 11(2)(a) of Schedule 2 to the Act confirms that the appeal is by way of a re-hearing and not simply a review of a housing authority's decision.

71. Section 9(2) of the Act confirms that regard must be had to the Operating Guidance and the Enforcement Guidance.

72. The Operating Guidance states in bold letters in paragraph 1.12 that the underlining principle of HHSRS is that: –

“Any residential premises should provide a safe and healthy environment for any potential occupier or visitor.”

73. Paragraph 1.18 of the Operating Guidance also states that “For the purposes of the HHSRS, the assessment is solely about the risk to health and safety. The feasibility, cost or extent of any remedial action is irrelevant to the assessment.”

74. It was evident from the inspection that some, but certainly not all, of the hazards identified in the Prohibition Order had been addressed.

75. Nevertheless, it was also evident that multiple hazards, including Category 1 hazards, remain at the property.

76. It was readily acknowledged by Ms Drury and Mr Stainton that progress and improvements had been made since their first joint inspection in October 2023. Nevertheless, neither was satisfied that the property is yet a safe and healthy place to be used as residential premises in a multi-occupied building. The Tribunal agrees with those assessments.

77. The Tribunal found that the works specified in paragraph 7 and Schedule 2 to the Prohibition Order are reasonable and proportionate and should therefore be confirmed.

78. The Tribunal carefully considered the Shahs' submission and request, having regard present state of the property and particularly the changes since October of last year, that the Prohibition Order should be replaced by an Improvement notice as being a better and the best course of action to address the remaining hazards. The answer was no. It did not find the property to yet be a healthy or safe environment for use a multi-occupancy residence, particularly when occupied, and with the potential to be occupied, by children and other vulnerable persons. It has not been designed or set out as such. The Tribunal's assessment took account of the whole of the premises and the potential effects that sharing may have on potential users from vulnerable age groups. Some of the continuing hazards can be certainly addressed and ameliorated on an ad hoc basis. Nevertheless, an inherent problem remains with the Shahs' stated wish, at some undesignated time, to restore the property as a commercial hotel, rather than to acknowledge its present and actual use and work with the authorities to ensure it is properly adapted and improved for that purpose.

79. The Tribunal's considerations included reference to the helpful advice contained in paragraphs 5.15- 5.23 of the Enforcement Guidance and giving particular and careful thought to all relevant matters mentioned in paragraph 5.23.

80. As part of its deliberations, the Tribunal considered whether the terms of the Prohibition Order could be varied and safely made subject to conditions. Principally because of the present inherent design deficiencies, but also because of concerns as to how the property has been managed, and is therefore likely to continue to be managed, the Tribunal did not find that to be a safe or viable option.

81. Having carefully assessed all the evidence, and because of the number and nature of serious hazards which remain within the property, the Tribunal concluded that the Prohibition Order is the best form of enforcement action available and therefore should be confirmed.

The Schedule

SCHEDULE 1

Address: The Girvan Hotel 30 West End Road, Morecambe, Lancashire, LA4 4DL

This is a building designed as a hotel which consists of four storeys including the basement, with separate bedrooms and shared facilities. At the time of the inspection, multiple rooms were being used for permanent sleeping accommodation with shared facilities including the bathroom and kitchen. It is the view of the Local Authority this is being used as a House of Multiple Occupancy (HMO).

The building is constructed from solid stonework to the front with rendered brickwork to the rear with a traditional slate roof.

The nature of the hazards and the deficiencies giving rise to the hazards under sections 11 and 12.

Section 11: Category 1 hazards:

Excess cold

There are a number of windows in severe disrepair which are defective, missing or damaged or single glazed with rotting frames resulting in accelerated heat loss and excessive draughts entering the property and considerable heat loss.

A number of windows have been replaced, however the ground floor kitchen window is single glazed and is in a poor condition.

There is damp and mould growth to a number of internal walls within bedrooms on the first floor currently being used as sleeping accommodation resulting in the thermal qualities of these walls being affected. Available heating is by a gas boiler which appeared to have been recently installed although no recent certificate could be located. This is a large building in disrepair suffering from accelerated heat loss caused by the poor thermal insulation of the structure. There are some radiators with broken valves meaning that heating cannot be isolated to certain rooms, and poorly maintained windows. Overall, these factors means that heating cannot be economically maintained at a reasonable temperature and substantially increases the likelihood of the dwelling being unhealthily cold and any occupants suffering from excess cold.

A gas certificate has been supplied dated 6/7/23. Broken radiator valves within occupied bedrooms have been replaced.

Mould has been removed from some of the bedrooms. The ground floor bedroom and bedroom 8 (kitchenette), which are being used, are suffering from extensive damp and mould growth, this is affecting the thermal qualities of the walls in that bedroom making it difficult to heat and retain warmth.

The heating throughout the building is supplied by a single boiler. It is unclear who is paying for the heating and whether this is controllable by the tenants. During my last inspection, it is clear that heating is supplemented by electric portable heaters which are expensive and inefficient to run for long periods of time.

The door on the ground floor leading out into the yard is badly fitted with large gaps and a hole next to the same door both adding to accelerated heat loss.

Falling between levels

Windows are poorly maintained, and some are rotten with no safety catches. Many have single glazing with low cills. There are two windows on the second storey which are missing the entirety of the glazing.

The windows representing a risk of falling on the second storey have been replaced.

The fire escape at the rear of the property is in severe disrepair.

The fire escape at the rear of the property is still in disrepair

Damp and mould

There is severe penetrating damp and mould growth in a number of bedrooms on the first floor including the family room to the front of the building where there are buckets placed to catch penetrating rainwater ingress. Other bedrooms on the first floor are suffering from damp and mould to internal walls with clear water ingress.

During the inspection on the 7 March 2024, it became evident that the family have been removed from the first floor front bedroom and have been placed in another bedroom. No water ingress could be identified during this recent

inspection so it is difficult to assess whether a temporary fix has been done or whether this is a result of more extensive works on the roof. However, there remains damp and mould in the ground floor bedroom and bedroom 8.

Section 12: Category 2 hazards:

Food Safety

Inadequate kitchen facilities make it difficult to safely store, prepare and cook food. Occupants are currently using spare bedrooms as makeshift kitchens with portable electric hobs, microwaves and fridges. These rooms do not have suitable hand washing facilities, no impervious worktop space, no cookers, no mechanical ventilation, no impervious floors or suitable storage provided for the number of shared occupants. There is a commercial kitchen in the basement which would have serviced the hotel in the past, with a large commercial gas oven, however this equipment is designed for users with specialised training and is inadequate for domestic use. Also, no recent gas certificate or carbon monoxide detector was identified.

Unchanged — kitchen facilities remain inadequate for the reasons explained above.

A gas certificate has been supplied for the gas oven in the Ground Floor commercial kitchen.

Personal hygiene, Sanitation and Drainage

One of the toilets on the first floor is in disrepair and is protruding away from the wall with a rotting soil pipe.

There are shared sanitary and washing facilities and no wash hand basins in a number of toilets.

Inadequate storage facilities for the storage of waste leading to an increase in the likelihood of pests.

Unchanged

Fire

A number of internal fire doors were in disrepair with no handles on the inside making it difficult to escape from sleeping accommodation.

A number of fire doors remain in severe disrepair, missing handles, painted over brush strips, difficult to open and close:

Door at the bottom of the stairs leading to the ground floor- not self-closing

Communal kitchen doors leading in and out- not self-closing

Ground Floor bedroom entrance fire door in poor repair- not self-closing

Boiler room- fire door in poor repair and not self-closing

First Floor bathrooms containing electric showers no fire doors

Bedroom 3, Fire door of poor quality, large holes and no handles

Bedroom 10- Bathroom no fire door with electric shower

Bedroom 7- no handle on fire door, not self-closing
Bedroom 11- no handle on Fire Door, not self-closing
Bedroom 13- no handles
Bedroom 14- large hole on fire door

The fire escape at the rear of the property is in severe disrepair.

Unchanged

Evidence of a number of electric portable heaters being used increasing any risk of fire.

Unchanged

Evidence of portable hobs being used which are not fixed with no intervening heat insulation.

Unchanged

A lack of an up to date suitable and sufficient fire safety risk assessment.

Not supplied

A lack of fire safety maintenance and testing records of the fire safety equipment and systems.

Emergency lighting and fire alarm service certificate supplied dated 28/9/23

Electrical hazards

The most recent electrical condition Installation Report (dated 30/9/21) was undertaken by a contractor whose details cannot be located on any competent persons register.

An alternative report has been supplied dated 30/10/23. This report refers to a shop. We are unsure what this relates to.

The property has undergone very little modernisation, and the electrical system is largely as originally installed.

Falling on stairs etc

External concrete steps with no handrail or artificial lighting increasing the likelihood of a fall and unforgiving surfaces at the foot of the landing leading to greater chance of a serious injury.

Unchanged

Internal staircases are narrow with partial missing handrails which are poorly lit with no natural light.

Unchanged

SCHEDULE 2

Action to be taken for the hazard under Sections 11 and 12

This is a dilapidated building previously used as a hotel that is in a serious state of disrepair. For it to be re-occupied as a dwelling or used as a House of Multiple Occupancy, it must be converted in strict accordance with current Building Regulations and with Lancaster City Council's HMO standards, along with a full planning application for a change of use.

The property is currently being used as a House of Multiple Occupancy. During the inspection dated 7 March 2024 there were two families and one single person residing there permanently and there was evidence that other bedrooms are being used as sleeping accommodation. No Planning application for change of use, or HMO license application has been received by the Local Authority.

Note: Alternative works proposed to those set out above will be considered but must only be carried out after receipt of written approval from Private Sector Housing.