



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

Case Reference : HAV/29UG/HEP//2025/0001

Property : 100 Darnley Road, Gravesend DA11 OSN

Applicant : ALEXANDER NIKOLIC

Representative : In person

Respondent : GRAVESHAM BOROUGH COUNCIL

Representative : Vicky Nutley/Claire Reynolds

Type of Application : Appeal against Emergency Prohibition Order

Tribunal Member(s) : Ms Clark (Judge) Ms C Barton Ms T Wong

Date and Venue of Hearing : 28th April 2025

Date of Decision : 13 May 2025

DECISION

Decision of the Tribunal:

1. The Tribunal concluded that the Respondents were entitled to find that a Category 1 Hazard existed at the property, and that such hazard involved an imminent risk of serious harm to the health and safety of “the occupier” such that it was appropriate for the Respondents to issue an Emergency Prohibition Order, prohibiting the use of the flat for all purposes, including sleeping, as made on 4th February 2025.

2. The Tribunal heard and accepted that no works of rectification /remedial action had taken place and as such they concluded that the application by the Applicant will be dismissed.

The Application:

3. The Applicant is the owner of a property at 100a Darnley Road, Gravesend in Kent DA11 OSN. This is a converted one-bedroom flat within a house. The Applicant lets out the flat.
4. The Respondents are the Council responsible for ensuring standards of housing in the area including the property in question.
5. The application is dated 4th February 2025 and was received at the Tribunal offices on 8th February 2025.
6. The property has been occupied by a young woman who according to the paperwork provided is called Natalia.
7. The Applicant told us he believes that a partner spends time there as well.
8. The Applicant applies pursuant to the Housing Act 2004 that the Emergency Prohibition Order should be set aside/revoked.

Directions:

9. Directions were given on the 11th of March 2025 provided as follows;
 - i) The Respondent by 18th March 2025 to inform the Tribunal of the names and room with flat numbers of the occupants/tenants/ owners and mortgagees likely to be affected by the emergency Prohibition Order so that the Tribunal can inform them of the appeal and give them an opportunity to join as a party or to make representations .
 - ii) By 18th of March 2025 the Respondents to provide the Applicant with copies of the calculations used to calculate the Category 1 and/or Category 2 hazards.
 - iii) The hearing was directed to take place remotely by video on Monday the 28th of April.
 - iv) Inspection was not ordered.
 - v) By 25th March 2025 the Applicant shall send to the Respondent a signed and dated statement with a statement of truth which sets out each aspect of its case copies of all relevant documents relied on any witness statements.

- vi) By the 8th of April 2025 the Respondent shall send to the Applicant to sign and date a statement with the statement of truth which sets out each aspect of its case including a response to the points made by the Applicant copies of any other relevant documents relied on any witness statements.
- vii) The Applicant had a right of reply by the 22nd of April 2025.
- viii) Any witnesses to attend the hearing.
- ix) Expert evidence was not ordered.
- x) The Respondent was responsible for preparing the bundle.

Compliance with directions

- 10. The Applicant failed to provide a statement by 25th March 2025 as directed.
- 11. Despite this the Respondents provided a Statement of case dated 8th April 2025 and a witness statement from Yassir Kilmister dated 4th April 2025.
- 12. On 3rd April 2025 the Respondent applied for a case management order requesting that the Applicants application be struck out.
- 13. The Respondent identified a number of breaches of directions by the Applicant including;
Failure to serve a statement of case.
Failure to comply with directions relating to the contents of the bundle.
Failure to provide a statement of truth.
Failure to provide witness statements.
- 14. On 9th April 2025 the Applicant applied for a case management decision providing an explanation for failure to send a bundle to the Tribunal.
- 15. The documents that the Tribunal received from the Applicant thus consist of the application and accompanying documents at pages 8-23 of the bundle and closing submissions at pages 32-33 of the bundle.

The Law

- 16. The Respondent local authority is responsible for a system designed to evaluate risks to health and safety relating to the condition/deficiencies in dwellings and to enforce compliance where appropriate. The scheme was established under the Housing Act 2004 as supplemented by the Housing Health and Safety Rating System (HHSRS).

17. The Tribunal adopts as correct the statement of the law given in the Respondent's statement of case at paragraphs 18 – 29.
18. The Housing Act 2004 Sc 45 provides that;
“a person on whom a notice under section 41 has been served in connection with the taking of emergency remedial action under section 40 may appeal to the appropriate tribunal against the decision of the local Housing Authority to take that action.”
19. Further the Housing Act 2004 Sc 45 (5) provides that;
“an appeal under subsection 1 or 2 is to be by way of a rehearing but may be determined having regard to matters of which the authority were unaware.”
20. 45(6) (b) provides that;
“The tribunal may in the case of an appeal under subsection (2) confirm or vary the emergency prohibition order or make an order revoking it as from a date specified in that order”.

The Hearing:

21. Despite the failure by the Applicant to comply with directions the Tribunal took the view that it was appropriate to permit him to address the Tribunal, to put questions to the Respondent's witness and put his case.
22. The Tribunal heard evidence from Mr Kilmister on behalf of the Respondent local authority. He confirmed his statement and that he had visited the property 3 times, on 13th January 2025, 24th January 2025 and on 4th February 2025.
23. The statement confirmed that the electricity supply had been cut off from the property by the Applicant on 24th January 2025, being the date of his second visit.
24. The statement confirmed that on the 4th of February 2025 when he attended the property, Mr Kilmister carried out an HHSRS assessment of the premises to assess the cold. He categorised the hazard as being Category 1 band A. He exhibited a copy of this assessment to his statement.
25. Mr Kilmister confirmed as part of his statement and in oral evidence that the external air temperature dropped to -1C between 31st January 2025 and 4th February 2025.

26. Mr Kilmister confirmed that the occupant was a young woman with a disability, namely had a leg amputated. He believed she may have ASD (Autistic Spectrum Disorder) and to the best of his knowledge does not work.
27. Mr Kilmister also confirmed that due to the lack of electricity there was no means of heating, lighting nor cooking. There was no gas supply to the property, no boiler nor means of obtaining hot water.
28. Mr Kilmister was challenged by the Applicant over photographs that appear to show glazed windows with poor seals and a door with poor seals allowing draughts in. Mr Kilmister confirmed that he had checked for draughts which existed. He referred to a photograph which appeared to show some form of covering and which he and the Applicant confirmed aluminium foil covering a window affixed internally by the tenant.
29. Despite the lack of a formal witness statement the Tribunal decided to hear from the Applicant.
30. The Applicant explained to the Tribunal that the occupier provided him with meter readings so that he could properly calculate the amount of electricity she had used in order for him to recharge her.
31. He also told the Tribunal that having asked her on several occasions to pay what he said she owed in relation to her electricity as she had accrued arrears he decided to cut the electricity supply off. The Applicant explained to the Tribunal that if he had not done so then he would effectively be paying for the occupier's electricity which he was not prepared to do and that the bill had been over £408.
32. An explanation was given by the Applicant about the electricity supply which went through a second meter along with another flat and the amount of the standing charge that he applied.
33. The Applicant explained to the Tribunal that there was an electric 2 kW standing plug in heater within the property that in his opinion was more than sufficient for the property although he accepted that it was not capable of being used as the electricity had been cut off by him. The Applicant did not however accept that there were any draughts in the property and said that the photographs in relation to the window showed only cosmetic faults and denied that the seals to the door permitted draughts to enter the property.

Findings of the Tribunal

34. The Tribunal found as a matter of fact that the electricity supply to the property had been cut off by the Applicant on or around the 24th of January 2025.
35. The Tribunal found that the occupant had thereafter been living in a property that had no heating, no lighting, no source of hot water and no means to cook.
36. The Tribunal was not satisfied that the Applicant's explanation for the lack of electricity formed a legal basis to successfully challenge the Prohibition Order.
37. The Tribunal was satisfied that the lack of any utility to enable the tenant to heat the property, fell within the Category 1 hazard as determined by the Respondent.
38. The Tribunal is therefore satisfied that this appeal fails, and the emergency Prohibition Order stands unamended.

Rights of Appeal

39. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
40. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
41. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
42. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

Name: Judge T A Clark Ms C Barton (Surveyor) Ms T Wong (lay member)

Dated: 13 May 2025

