



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

Case reference : **BIR/00CN/HPO/2024/0605**

Property : **Flat 7 48 Handsworth Wood Road
Birmingham B20 2DT**

Applicant : **Rebecca Allmark**

Representative : **Mr Edward J Fitzpatrick (Counsel)
instructed by Community Law
Partnership**

Respondent : **Birmingham City Council**

Representative : **Mr Alistair Redfern (Counsel)
instructed by in-house legal team**

Type of application : **Appeal against a prohibition order**
Sections 20 & 21 and paragraph 7(1) of Schedule 2 to the
Housing Act 2004

Tribunal : **Judge D Barlow
Mr N Wint FRICS
Mr A McMurdo**

Date of hearing : **23 September 2025**

Date of decision : **27 November 2025**

DECISION

1. The Prohibition Order dated 8 October 2024 in respect of Flat 7, 48 Handsworth Wood Road, Birmingham B20 2DT (“the premises”) is quashed.

REASONS

Background

2. Rebecca Allmark, the Applicant, has been residing at the premises since 2007 under an assured shorthold tenancy agreement. Flat 7 is owned by the estate of her landlord Mr Peter Grimes Dd, who died on the 16 January 2021. He purchased a long lease of flat 7 on 18 April 2008, shortly after letting it to Rebecca Allmark. The purchase monies were in part provided on mortgage by Royal Bank of Scotland. Peter Grimes estate is being administered under letters of administration granted to his mother, Mrs Rae Grimes on 3 May 2022.
3. The premises is one of 15 flats within the building 48 Handsworth Wood Road. They are all let on long leases in substantially the same form. The leases demise the structural parts bounding each flat to the leaseholder. However, Blue Property Investment UK Limited is the freeholder. It has a contractual obligation under the lease to keep the structural parts of the building including the walls bounding individual flats, the floors and all external parts in repair, along with common parts of the building, all of which are described in the second schedule to the lease as "The Maintained Property". The sixth schedule contains standard service charge provisions for the costs incurred keeping the Maintained Property in repair to be recharged to the leaseholders, each paying a 1/15th share.
4. Rebecca Allmark is registered blind with minimum vision. She lives alone with three small dogs. She also suffers from other debilitating conditions all of which were known to the council through the intervention of other departments, including Adult Social Care, Social Services, the Low Vision Team, the Sensory Impairment Team and the Homeless Team. Rebecca has a social worker and is reliant on weekly care from local carers to enable her to live independently. She has a network of support in the immediate neighbourhood on which she is heavily dependent. Throughout the tenancy Rebecca's rent has been paid directly to the landlord by the DWP. In short, Rebecca Allmark is a vulnerable person with disabilities that require considerable support for her to maintain an independent life.
5. The events leading to the involvement of the local housing authority are as follows:
 - a. Following the death of Peter Grimes the DWP stopped paying rent until the identity of the competent landlord was confirmed. Consequently, the mortgage payments to Royal Bank of Scotland ceased and they appointed LPA receivers who, on 18 July 2023, obtained a possession order in the county court against the Applicant. Her solicitor, Ms Rose Pritchard, was granted legal aid to appeal the order. It transpired that a mistake with the original lease plan (which incorrectly outlines the neighbouring Flat 7a) cast sufficient doubt on the identity of the charged property for

the court to set-aside the possession order in June 2024. The receivership has since been discharged while the lender seeks rectification of the lease.

- b. Mrs Pritchard subsequently contacted various parties about Rebecca Allmarks living conditions. Enquiries between the council and DWP resolved the rent arrears. A back payment of £7000.00 was paid to Mr Grimes estate and it is understood rent payments are being maintained.
- c. Mrs Pritchard instructed Mr Gurdip Chamba, a surveyor to inspect the premises on 3 April 2024, and provide a report on its condition. The most pressing issue was the dangerous state of the bathroom floor which was at risk of collapse. The toilet had been unusable for some time and was sinking into the floor due to water escape leading to decay. The plumbing appeared to be leaking into a void space beneath which housed electricity meters. Signs were found of some remedial work to the joists in this area in the form of propping, but Mr Chamba did not find that provided proper support.
- d. She sent a copy of Mr Chamba's preliminary letter dated 2 April 2024 to Mr Joyed Ahmed the EHO allocated to this case immediately and followed up with a copy of the report on 14 April 2024.
- e. A copy was also sent to the Private Rented Services team, the freeholders managing agent at Inspire Management and the RTM company who was at the time responsible for managing the building. The RTM company was virtually moribund; it had no funds with which to carry out the necessary repairs but did arrange for the bathroom floor to be shored up before sliding into liquidation.
- f. In June 2024, Mrs Pritchard wrote again to Mr Joyed Ahmed, and to Blue Property Investment UK Limited, the freeholder, reiterating her concerns about the need for urgent action. She also wrote to Mr Grimes administrator Rae Grimes.
- g. On 20 August 2024, Mrs Pritchard chased again sending further correspondence to Mr Ahmed demanding to know what action the council was taking. Lesley Williams, the senior service manager for the Private Rented Services team responded on 23 August 2024 to say (in terms) that she had discussed the case with Mr Ahmed and that as Rebecca Allmark was living rent free, and the identity of the party liable to carry out the repairs unclear, the best option was probably to prohibit use of the premises and seek a re-housing solution for Rebecca. She pointed out that the council was not obliged to carry out default works where they are

unable to recover costs, or where the accommodation is unsustainable. There followed further correspondence in which Mrs Pritchard explained that rent was in fact being paid and why a prohibition order was inappropriate without suitable alternative accommodation being in place. There is a poignant email dated 27 August 2024 in which Mrs Pritchard details her fruitless efforts to engage some multi agency support for her client.

- h. Mr Ahmed finally inspected the premises on 10 September 2024 with a colleague. He took photographs which are exhibited to his statement. Following a discussion with his manager Ms Lesley Williams it was decided that the best course of action was to serve a prohibition order. He then duly notified the Housing Options Team to assist Rebecca Allmark with finding alternative temporary housing, should she approach the council.
6. A prohibition order was prepared and on 8 October 2024, copies served on Rae Grimes, the Administratrix of Mr Grimes estate, and the Bank of Scotland (the registered mortgagee of Flat 7a title number WM936381). On the same date a copy was sent to the Applicant. She did not receive it until 20 October because it had apparently been delivered to one of her neighbours in error.
7. On 5 November 2024, Mrs Pritchard filed an appeal against the council's decision to make a prohibition order. Standard directions were issued for statements and evidence bundles. The case was listed for an inspection followed by a hybrid hearing on Monday 30 June 2025. On Thursday 26 June 2025 the council filed an application to postpone the hearing on the grounds that its principal witness (Mr Ahmed) was unavailable to attend. Given the proximity to the hearing the Tribunal went ahead with the inspection and heard submissions on the postponement application as a preliminary issue.
8. The Respondent was represented by counsel who was instructed to deal with the postponement application only. He explained that Mr Ahmed was indisposed and would remain so for about six weeks. Furthermore, the only other officers with relevant knowledge of the case were also on sick leave. The Tribunal determined that it had little option but to postpone as the council was effectively absent and unrepresented on the issues in the case. It was evident from the papers, and the Tribunal's inspection, that the Applicant was a very vulnerable person living in poor conditions. The case required an urgent multi-agency approach and the Tribunal expressed a hope that the council would conduct a full review during the adjournment period.
9. Sadly, that opportunity was not realised and the case came back before the Tribunal on 29 September 2025. There is a separate costs application in relation to the adjourned hearing. Submissions from both parties were received during October 2025 and a separate Decision will be issued on this.

Inspection

10. Flat 7 is self-contained one bedroom ground floor flat forming part of a converted period house. It is accessed through a private entrance from a communal hallway. The front entrance to the building is accessed from Handsworth Wood Road over a roughly paved frontage leading to a short set of 3 concrete steps up to the main entrance door. The Flat entrance door leads into the sitting room. Immediately to the right is the kitchen. The bedroom is at the front of the building opening directly from the sitting room. The bathroom also opens from the sitting room but is a few feet higher and accessed by a short set of 3 steps.
11. The bathroom floor had been shored up and was stable to walk on. There was a bath with shower over to the right. The toilet had been resealed but was still tilted forward and did not look safe to use for more than flushing soiled water.
12. The rooms were of a reasonable size and in reasonable repair and decoration. The front facing window in the sitting room and bedroom were painted shut and in need of work to free them.
13. The Flat was very warm; heating appeared to be provided by electric convector heaters.
14. The meter room under the bathroom is accessed externally by a separate door. Headroom was very restricted in this area. The shoring up works to the joists could be seen. It did not appear that any joists had been completely replaced.

The Prohibition Order

15. The order made on 8 October 2024 in respect of Flat 7 48 Handsworth Wood Road, prohibits the use of the ground floor flat, for the purpose of human habitation. It specifies in Schedule 2 the remedial work which, if satisfactorily completed, will allow the council to revoke the order.
16. The first point to note is that the copy orders served on the various recipients are not the same. The order served on Rae Grimes and Bank of Scotland include an additional paragraph in the statement of reasons to that of the order served on the Applicant. Paragraph 9 of the order served on the Applicant states that the *options* in 2.1 (i.e. the choice of enforcement action) was considered against five objectives. Those *objectives* are listed at paragraph 9.2. The order served on Rae Grimes and Bank of Scotland includes six objectives. The additional *objective* (2) refers to a first floor flat. That mistake occurs in a number of other paragraphs of the order. Mr Ahmed was unable to account for the error at the hearing was unclear about whether there should be 5 or 6 *objectives*.
17. No copy of the order was served on the freeholder Blue Property Investment UK Limited, or it seems, on the Royal Bank of Scotland (the mortgagee of the premises) as required by paragraph 2(2)(a) and (c) of

Schedule 2 of the 2004 Act. Mr Ahmed said that he'd spoken to one the managers of the freeholder and accepted, apparently without question, his assertion that the freeholder was not responsible for the repairs. He did not explain why the order had been served on Bank of Scotland, the mortgagee of the adjoining Flat 7a.

18. The order identifies 2 category 1 hazards and 2 category 2 hazards. Specifically:
 - a. Category 1 - excess cold due to the absence of affordable and controllable heating in the living room and bedroom
 - b. Category 1 – personal hygiene due to collapsed and leaking WC and poor floorboards.
 - c. Category 2 – fire, there being no escape from bedroom other than through the living room due to windows not opening.
 - d. Category 2- falls on steps due to absence of handrails on steps leading to front door of building, (which form part of the common parts of the building).
19. Schedule 2 of the order specifies the works needed to remediate each hazard to enable the order to be revoked as follows:
 - a. Excess Cold: Install suitable electric storage heaters or alternative methods that are sufficient to meet minimum requirements and are energy efficient and affordable to use (paraphrased).
 - b. Personal Hygiene:
 - Fix the bathroom floorboard as necessary.
 - Ensure that plumbing to the WC is watertight.
 - Renew seals around the bath as necessary.
 - c. Fire:
 - Ensure that the window opening to the rear room currently used as bedroom is accessible.
 - Ensure that the living room window opening is accessible.
 - d. Falls on stairs: Provide handrail to front steps leading to the flat.
20. There is no dispute concerning the hazard ratings or the remedial actions specified.
21. The order includes a Statement of Reasons, as required section 8 of the 2004 Act.
 - a. Paragraph 1 sets out a brief description of the premises and building. It correctly identifies the estate of Peter Grimes as the leasehold owner of Flat 7.

- b. Paragraph 2 explains the council's duty to take enforcement action and the enforcement options available to it. The relevant options for the purposes of an appeal under paragraphs 7 and 8 are an improvement notice, a hazard awareness notice or a demolition order.
- c. Paragraph 3 explains the council's policy. It refers to its current policy as '*Private Sector Housing Enforcement Policy for the Regulation of Housing Standards and for the Licensing of Houses in Multiple Occupation.*' However, on examination, this policy does not refer to HHSRS at all. It does not set out the council's policy or approach to assessing housing safety standards or enforcement. It is focussed almost entirely on the licensing regime and financial penalties. This was accepted by Ms Williams at the hearing. She said the council had recently consolidated its guidance on licensing and housing standards which had led to the new guidance not containing any specific guidance on HHSRS or enforcement under it.
- d. Paragraph 3 of the order states that "*Wherever possible, landlords will be given the opportunity to carry out remedial work themselves however, where enforcement action is found to be necessary, the works or actions required will be proportionate to the risks involved. In respect of FLAT 7..., establishing the person in control of the flat since the demise of the leaseholder had been an issue since the complaint received from tenant solicitor... Upon notification of the person given administrative control of the flat, this section decided to inspect to determine course of action.*"
- e. Paragraph 4 sets out the decision stating that:

"Based upon the evidence collected, the Council has determined that in the case of the Category 1 Hazard of 'Excess Cold', 'Falls on Stairs and Steps and 'Fire' the most satisfactory course of action is to make a Prohibition Order under Section 20 of the Act, prohibiting use of the first floor flat for habitation, until the Hazard has been resolved. Both of these courses of action are considered appropriate for the reasons described below."
- f. The reference to a first floor flat is unexplained and the failure to refer to the most urgent hazard, the bathroom floor, is also unexplained.
- g. Paragraph 6 states the view of the occupier as follows:

"The occupier is a single male Mrs R Allmark who is partially blind should be moved out of the dwelling due to the poor condition of the property."

Perhaps needless to say, the Applicant is female, single and registered blind, not partially blind.

- h. Paragraph 7 states that the council had written to Rae Grimes about the inspection but had not received any contact.
- i. It is important at this stage to note that Paragraph 8 states:

“Most of the works could be undertaken with relative ease and would be possible whilst the tenants remain in occupation. However, given the tenant vulnerability it will be difficult for the contractors to carry out the works. The cost of the required works has been roughly estimated to be in the region of £6,000 to £7,000. It is considered that this is a not an unreasonable amount of money to invest in a property of this type, in order to comply with the legal requirements, and it is proportionate to the economic and socio-environmental benefits derived”.

There is no explanation of how the costs were estimated by Mr Ahmed. Mr Chamba in his detailed report, provides an estimate of £6,300.00 for the far more extensive works itemised in his report. The cost of remediating the most urgent hazard, the bathroom floor and associated plumbing, he puts at £2,900.00.

- 22. Paragraph 9 identifies the council’s issues (para 9.1) and *objectives* (para 9.2) and weighs them to arrive at the appropriate enforcement action, *option analysis* (9.3).
 - a. Para 9.1 (*issues*) identifies “*The property administrator lack ability or willingness to undertake works voluntarily*” as an issue. However, at the date of the decision the council had received no contact from Rae Grimes. It was not aware of her age or degree of interest in the premises until after the order was made. This was specifically confirmed by Ms Williams at the hearing.
 - b. Para 9.2 (*objectives*) the copy order served on the Applicant includes 5 objectives, the relevant one identified by Mr Ahmed in relation to the council’s decision being **objective 9.2(3)** – “*To ensure that the owner and landlord is compelled to comply with the law*”. It should be noted that the copy notice served on Rae Grimes includes a different objective 9.2(3). It is the additional objective that was apparently included in error.
 - c. Para 9.3 (*option analysis*) sets out the rationale for the enforcement action decided on.
 - i. Para 9.3(a) acknowledges that an improvement notice would meet the objectives of securing safe and decent housing conditions, remove the existing Category 1 hazards, lawfully discharge the councils duties by compelling the owner and landlord to comply with the law and allow the council to carry out the works in default, but somewhat contradictorily also states that an improvement notice is nevertheless rejected because it would not “*meet*

objective 9.2(3) and is not therefore considered acceptable to allow use of the flat to continue”.

- ii. Para 9.3(b) identifies the purpose of a prohibition order as being to remove persons ‘at risk of harm” from the hazards. It recognises the need for the council to provide suitable alternative accommodation.
- d. Para 9.4 (*conclusions*) states that “*there is one possible enforcement actions available, that would satisfy the identified objectives; to make a Prohibition Order, requiring the owner to vacate the part of the premises within a stipulated time period.....*”. In practice the order requires Rebecca Allmark to vacate the flat entirely, without suitable alternative accommodation in place and little prospect of her resuming occupation of the flat in the future.

The grounds of appeal

- 23. Rebecca Allmark accepts that the hazards identified on the order are category 1 and category 2 hazards. The same items of disrepair were identified in Mr Chamba’s report. Her main issue is the choice of enforcement action, but she does also question whether the order has been validly served on the persons specified in Schedule 2 paragraph 2(2).
- 24. Rebecca Allmark argues that the best course of action in this case was to serve an improvement notice on the Blue Property Investment UK Limited, the freeholder, and the estate of Peter Grimes because between them they were liable to keep the structure and interior of the premises in repair. An improvement notice would meet the objective of securing safe and decent housing conditions for the tenant and compel the leasehold and freehold owners to comply with the law. It would also allow the council to carry out works in default and to prosecute in the event of non-compliance. An improvement notice would have met the council’s stated issues and objectives.
- 25. Any dispute between Blue Property Investment UK Limited and the estate of Peter Grimes concerning their primary liability for repairs under the lease was a matter for them to raise in their defence. It was not for the council to prejudge the position or make assumptions about the possible arguments each might advance.
- 26. Furthermore, the Respondent has failed to properly consider Rebecca’s views and circumstances, her manifest vulnerabilities, and relevant sections of the current national guidance contained in The Housing Health and Safety Rating System Enforcement Guidance issued in February 2006 (“the HHSRS Guidance”).

27. In her statement, Rebecca states that she was not asked for views, had she been asked she would have said that she did not want to move out. Rebecca has lived in the flat for 17 years and if moved into temporary accommodation away from her carers could simply not function. She is blind, she needs to be securely orientated to her accommodation both inside and outside. Rebecca has a severe allergy to barley and cannot come into contact with everyday substances containing it. She is diabetic and needs regular meals. Her GP stated:

"I do believe that inappropriate accommodation or homelessness would have a significant impact on her health. Her limited vision already makes it harder for her to access services".

28. Rebecca has had limited engagement with other council departments concerning alternative accommodation. It has not proved fruitful. She has been asked to make online applications that are impossible due to her blindness. Offers by council officers to assist do not materialise. Rebecca was placed in a lower banding of priority than her level of disability suggests is correct, and although this has now been reviewed and re-banded to the higher Band A, it took considerable time and persistence.
29. Rebecca recounted some of the issues she faced with bidding for alternative accommodation. The process starts with a phone call giving her an address. This tells her nothing about how accessible the property is, the level of traffic, available crossings, or obstacles to navigate. She is not permitted to enter the property to see if it is suitable for her needs unless she first makes a successful bid. She is expected to bid unseen for accommodation which may be completely unsuitable.
30. Ms Pritchard explained the council's statutory duty to re-house Rebecca if she loses her home due to the prohibition order. However, no one at the council engaged with Rebecca. She received one phone call from the homeless team who sent her a text saying she should call the number provided and select option 3 to speak to a housing assessor. With the assistance of Mrs Pritchard, Rebecca spent an afternoon trying, without success, to get through the layers of automated responses to speak to someone.
31. In oral evidence Rebecca confirmed that she preferred to be addressed as Rebecca. She said that she disagreed with the suggestion she needed to move out for the remedial works. The bathroom is functional since the RTM company shored up the floor. She can use the shower, and she has a commode in her bedroom which she will continue to use when the toilet is replaced or re-seated because at night the toilet is too far from the bedroom. She empties the commode into the toilet which is functional for flushing since it has been re-sealed. Replacing the toilet and the other remedial work is not in her view urgent, and she is happy to continue with her current work around until the repairs are completed. If she must wait a year for that to be done, then so be it.

32. Ms Pritchard filed a witness statement confirming the considerable efforts she had made on behalf of Rebecca to resolve her housing problems, much of which has been referred to in the background information above. Ms Pritchard instructed Mr Gurdip Chamba FRICS, an independent surveyor, to inspect and report on the condition of the flat. His report is discussed below.
33. Ms Prichard contacted the freeholder and Rae Grimes. Apart from a brief call from Rae Grimes nephew there was no substantive response. She details her correspondence with Mr Ahmed and Mrs Williams and her failed attempts to persuade the council to carry out remedial action under s40 in default if the freeholder and leaseholder were unwilling. She recounts her attempts to involve Adult Social Care and the Housing Department which were batted off to the council Homeless Team to investigate. She explains why leaving Rebecca at the mercy of last-minute homelessness was inappropriate and states that she did all that she could to explain why Rebecca's housing needed to be sensitive to her disabilities.
34. She submits that the council failed to consult with relevant agencies when identifying the appropriate response to the hazards. Rebecca has endured the current bad conditions for some considerable time with assistance and work arounds. The works could have been carried out over a very short period while, if necessary, Rebecca was in temporary short-term accommodation.
35. Ms Pritchard submits that in selecting a prohibition order the council has made a decision which has the effect of excluding a vulnerable occupant from her home in the private rented sector. The accommodation is suitable for Rebeccas needs; it ensures her continued independence and steps should have been taken to retain it for her occupation.
36. Ms Pritchard also contends that section 6 of the Equality Act 2010 is engaged by section 4.6 and, 4.9 and 4.14 of the HHSRS Guidance. The Equality Act 2010, section 149 requires the local authority to have due regard to Rebecca's disability even where this may involve treating her more favourably than other persons when considering a decision which might affect her. She submits that the local authority failed to carry out an assessment of her needs pursuant its duty under section 149 and therefore paid no or insufficient regard to her disabilities when making its enforcement decision. There was she says no "sharp focus" on Rebecca's disability and how an enforced move would affect her.
37. In oral evidence Ms Pritchard said that the council has the power to carry out the works in default and should do so. It is one of the largest councils in Europe. It has many officers and is legally obliged to consider vulnerable citizens in all its decisions. The estate of Peter Grimes is stated to be worth more than £100,000.00 and the council has the power to place a charge on the property to secure repayment of the costs of the works. She confirmed that although Rebecca expressed her wishes to Mr

Ahmed, they did not appear in the council's reasons for imposing a prohibition order. The council must fully consider the position of vulnerable occupiers and not justify failing to do so because it's all too complicated.

Surveyors Report

38. Mr Gurdip Chamba inspected the property on 3 April 2024, prior to the RTM company shoring up the joists below the bathroom floor.
39. His report confirms that he did not carry out a full building survey or a formal HHSRS assessment but identified hazards present in the property of the type defined by HHSRS. Items of disrepair relevant to this application are, timber decay and sagging of the bathroom floor, the sinking of the toilet into the floor, leaks from the WC into the electricity meters in the void beneath the floor, dampness behind the WC, bedroom and living room windows sealed shut, no handrail to the front entrance steps. The report identifies numerous other items of disrepair that should be addressed by the landlord.
40. A schedule of repairs was annexed, the total cost of which he estimated to be £6,300.00. This included the numerous additional items that are not the subject of the prohibition order. There is a breakdown in which he estimates the cost of remediating the bathroom floor and removing and re-fitting/plumbing all the sanitary fittings (the most critical items) at £2,900.00. The costs of overhauling the bedroom and living room windows are estimated at £300.00. The cost of installing a handrail to the front entrance steps is not separately costed and the report does not address heating.

Council's case

Mr Joyed Ahmeds evidence

41. Mr Joyed Ahmed filed a statement and gave oral evidence. He is an Environmental Health Officer in post for 17 years and responsible for carrying out technical surveys under the HHSRS. He was first made aware of the case in connection with the possession proceedings in 2023 which were resolved without the involvement of his department.
42. His departments engagement began following receipt of Mr Chumba's survey report on 19 April 2024. He contacted Savills who he understood were then managing the property for the freeholder. On 16 May 2024 they denied responsibility for maintenance.
43. Mr Ahmed stated that it was necessary for him to identify the person responsible for managing the property before inspecting and determining the most appropriate enforcement notice. He obtained an office copy of the lease of Flat 7 filed under title WM945022 (Peter Grimes lease title). He also obtained office copies of title WM936381

which relates to Flat 7a (i.e. not Flat 7). It is unclear why, but this is presumably what led to the notice being served on the mortgage lender of Flat 7a and not Flat 7. He correctly identified that the leaseholder was the estate of Peter Grimes and that Rae Grimes was the administrator of the estate.

44. Mr Ahmed did not provide copies of the freehold title but was aware that Blue Property Investment UK Limited owned the freehold. In oral evidence he confirmed speaking to Jordie Saunders, a property manager of the freeholder in July 2024, who said the freeholder was not responsible for the repairs. When challenged on this point; and referred to specific clauses in the lease that confirm the freeholder is liable for maintaining the structural parts of the building, Mr Ahmed said that was where the confusion arose. He did not have the knowledge to construe the lease, so he took the managers word for it. He also confirmed that despite this, he did not refer the issue to the council's legal department for analysis and comment.
45. Instead, following his inspection on 10 September 2024 (the findings of which are not in dispute) he pressed ahead with enforcement action against the leaseholder and Rebecca. He did not take the usual step of informally notifying the relevant persons responsible for maintenance of the hazards and remedial work required. In his view the work was too urgent for any informal action and if something went wrong, he would be responsible.
46. Mr Ahmed said that he had asked Rebecca what she thought should happen and understood that she had worked out alternatives to using the toilet, and that she was reliant on her close by support network, but as an individual he was worried about doing the right thing.
47. Mr Ahmed couldn't explain the discrepancies in the notices but concluded there may have been some error on his part. He did not serve notice on the freeholder because he had accepted what the manager had told him about its lack of liability. His main reason for selecting a prohibition order over an improvement notice was timing. He thought an improvement notice would trigger a lengthy process of follow up inspections and default work leaving a vulnerable occupier at imminent risk of serious injury. If the bathroom floor collapsed it would have fallen into the electricity meter room below. He discussed the decision with his manager Ms Leslie Williams who supported his decision. Mr Ahmed then notified the Housing Options team to assist, if contacted by Rebecca.
48. When pressed Mr Ahmed confirmed that although there were fire safety risks in relation to the sealed windows, the condition of the bathroom floor and supporting joists was the main cause of concern without which an improvement notice might have been the most appropriate enforcement action. He appeared not to have appreciated that the shoring up works to the joists carried out by the RTM company had stabilised the floor which was no longer at risk of imminent collapse.

Lesley Williams evidence

49. Lesley Williams is a Senior Service Manager for the Private Rented Services (PRS) Enforcement Team at Birmingham City Council where she has been employed for 39 years. She filed a short statement in response to directions issued following the adjourned hearing and gave oral evidence.
50. Ms Williams began by explaining that PRS is not responsible for rehousing issues. A theme she returned to in oral evidence. The housing condition complaint was allocated to Mr Ahmed on 23 April 2024. He carried out background checks to establish ownership and liability before inspecting on 10 September 2024. In line with their procedures, his decision to issue a prohibition order was first discussed with Leslie Williams, who after considering the hazard scores, photos and supporting evidence agreed with his decision and signed the order on 1 October 2024.
51. Ms Williams stated that the reasoning was based in part on their determination that the long leaseholder was the responsible person, but Perter Grimes estate was still in probate. The age and perceived infirmity of the executor Rae Grimes was also a factor from which Ms Williams and Mr Ahmed somewhat contradictorily decided “that she was not a person with liability to carry out repairs to the property in this case”. I should mention here that this information was not before the council on 1 October 2024.
52. It was put to Ms Williams that remediating the main item of concern (i.e. the bathroom floor and toilet) was quite simple. It only required a joiner and plumber at an estimated cost of £2,900.00. She said that the council was reluctant to consider remedial default works where there were multiple hazards requiring substantial works which would need project managing. The council did not have a list of contractors or the resources to project manage a big job. Ms Williams explained that the council was currently operating under section 114 notice (the term refers to part of the Local Government Finance Act 1988), and although that did not affect the council’s statutory duties, one consequence is that only urgent repairs such as boiler repair and electrical, gas and water emergencies are being carried out. Another consequence is that contractors who have experienced delay in payments and are reluctant to take on new work. A further consequence is that departments are required to obtain permission before incurring additional expenditure.
53. Ms Williams said that the council would also consider how sustainable the accommodation was before carrying out default works. She did not really explain why the accommodation would not be sustainable once the work was completed.
54. An additional reason for not serving an improvement notice was perceived difficulties enforcing it. She said information had been

received which indicated Rae Grimes was in her eighties and living in a care home with dementia. This was not part of the council's written testimony and was first put forward at the hearing. Ms Williams confirmed that the information was not before them when the decision was made to impose a prohibition order. At that time the council had no information on Rae Grimes and was unaware that she was Peter Grimes's mother. The subsequent information does not appear to have been verified; indeed, Ms Williams was not sure of the source of the information, but she expressed some satisfaction that it retrospectively supported the council's decision.

55. With regard to the freeholder, Ms Williams was asked why the council hadn't engaged with Blue Property following the adjourned hearing, during which the Tribunal expressed the view that the freeholder appeared to be responsible for the structural parts. She said that the council had not engaged with the freeholder because they would dispute this and argue that the damage was caused by tenant disrepair. She confirmed the council's decision not to engage was because "we would get pushback" so they "wouldn't bother".
56. When asked to point to the council's policy on HHSRS enforcement Ms Williams confirmed that there had been a separate PRS policy, but following amalgamation of various enforcement policies this was no longer the case. There was an internal unwritten policy under which cases were triaged to determine the course of action, discussed with managers if it involved use taxpayers' money, then progressed accordingly.
57. Ms Williams was asked what attempts were made to encourage a multi-agency approach. She confirmed that it was not within Mr Ahmeds remit to call a multi-agency meeting. After the last hearing she met with the council solicitor and Housing Solutions and Support who should have considered a wraparound package. After that she left it to them. Ms Williams didn't know what had gone on after the referral to Housing Solutions, she said that if matters had not gone smoothly, she could only apologise on behalf on the council, but she had no control over re-housing.
58. Ms Williams was asked about the council's statutory duty to carry out a section 149 assessment of Rebeccas needs. She confirmed that she hadn't carried out an assessment because it was not something PRS enforcement would consider. They only look at Health and Safety and HHSRS. She suggested other agencies within the council may have done so.
59. When asked directly if failure to comply with the notice would lead to prosecution Ms Williams skirted the question, saying she thought Rebecca would move out at least temporarily. Everyone knew she needed better housing, and Ms Williams had hoped someone would find somewhere appropriate. However, that was not her job and didn't affect the decision she needed to make.

Law

60. Part 1 of the 2004 Act is concerned with the enforcement of housing standards. Chapter 1 introduced a new system for assessing housing conditions by reference to the existence of category 1 and category 2 hazards.
61. A “hazard” is defined in section 2(1), as “any risk of harm to the health or safety of an actual or potential occupier of a dwelling or HMO which arises from a deficiency in the dwelling or HMO or in any building or land in the vicinity (whether the deficiency arises as a result of the construction of any building, an absence of maintenance or repair, or otherwise)”.
62. Category 1 and 2 hazards are classified by reference to a numerical score ascertained under a scheme for calculating the seriousness of hazards prescribed by the Housing Health and Safety Rating System (England) Regulations 2005 and known as an HHSRS assessment. By section 2(1), 2004 Act a category 1 hazard is a hazard of a prescribed description which achieves an HHSRS score above a prescribed amount; a category 2 hazard is a hazard which achieves a score below that prescribed amount. A category 2 hazard is therefore less serious than a category 1 hazard, but it is not simply a defect; to be a hazard of either category it must be a “risk of harm ... which arises from a deficiency in the dwelling or HMO”
63. Where a local housing authority becomes aware that a category 2 hazard exists in residential premises it has a discretion to take action. Where a category 1 hazard exists it has a duty to take action. It has a range of powers including the service of a prohibition order under section 21(1). An order under s21(1) is an order imposing such prohibition or prohibitions on the use of any premises as is or are specified in the order. Non-compliance with a prohibition order is a criminal offence.
64. Section 22(2) of the 2004 Act provides for the contents of a prohibition order. Which includes specifying: the nature of the hazard concerned and the residential premises on which it exists, the deficiency giving rise to the hazard, the premises in relation to which prohibitions are imposed by the order, and any remedial action which the authority consider would, if taken in relation to the hazard, result in their revoking the order under section 25.
65. Paragraph 7(1) of Schedule 2, 2004 Act provides for appeals against prohibition orders to the FTT. Paragraph 11(2) and (3) sets out the powers of the FTT on an appeal:
 - 11(2) The appeal–
 - (a) is to be by way of a re-hearing, but

(b) may be determined having regard to matters of which the authority were unaware.

11(3) The tribunal may by order confirm, quash or vary the prohibition order.

66. Paragraph 8 of Schedule 2 provides that a ground of appeal may be that one of the courses of action set out in sub-paragraph (2) is the best course of action in relation to the hazard.

(2) The courses of action are—

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

(b) serving a hazard awareness notice under section 28 or 29 of this Act;

(c) making a demolition order under section 265 of the Housing Act 1985.

67. Paragraph 12(2) provides that when deciding whether one of the courses of action mentioned in paragraph 8(2) is the best course of action in relation to a particular hazard, the tribunal must have regard to any guidance given to the local housing authority under section 9.

68. Section 9 requires the local housing authority to have regard to any guidance for the time being given under this section. The current national guidance on housing health and safety is *The Housing Health and Safety Rating System Enforcement Guidance* issued in February 2006 (“the 2006 HHSRS Guidance”).

69. ***Hussain (Nasim) v Waltham Forest LBC [2023] EWCA Civ 733***, the Court of Appeal considered the identically worded paragraph 34 of Schedule 5, 2004 Act (concerning appeals against local authority decisions relating to licensing). It was common ground that although an appeal was to take the form of a re-hearing, that did not mean that the FTT should disregard the view of the local authority and begin its own consideration entirely afresh. On the contrary, because the local authority is the body entrusted by Parliament with the primary responsibility for making such decisions, the FTT should accord its views special weight or deference and should only conclude that one of its decisions is wrong if it disagrees with the decision despite having accorded it that special weight

70. The Court of Appeal also concluded in ***Hussain*** that the FTT was required to consider whether the decision under appeal was wrong at the time when the decision was taken (and not at the date of the appeal). The matters to which it was entitled to have regard therefore comprised only those which had occurred by the time the decision was taken, and which could have been taken into account by the authority if it had been made aware of them.

71. The Upper Tribunal in *Managuel Company Limited v London Borough of Lambeth* [2025] UKUT 97(LC) considered detailed argument on the application of *Hussain* to Part 1 of the 2004 Act and confirmed at para 43 that *Hussain* applied equally to Part 1, so that events which occurred after the local authority decision was made cannot be relevant to whether it was right or wrong

Discussion

72. The HHSRS system is about reducing risks to the health and safety of occupants of a building. However, it is generally accepted that not all risks can be eliminated. Our task is to decide whether hazards are present at the Property, and if so what, if any, enforcement action should be taken. If we agree that a Category 1 hazard exists, enforcement action of some kind must be taken. We must give special weight to the council's decisions and only depart from them if we think they are wrong.
73. In this case there is no dispute concerning the existence of Category 1 hazards or of the works required to remediate them. The issue we are required to consider is whether to confirm, quash or vary the prohibition order on general grounds or because it is not the most appropriate enforcement action.
74. In considering whether a prohibition order is not the most appropriate enforcement action we must have regard to any current Government guidance and Council policy on HHSRS enforcement.

Guidance

75. The order refers to the council's July 2024 enforcement policy, but it was conceded in oral evidence that the policy does not include reference to the council's policy on HHSRS enforcement. Consequently, it is of very limited value in our determination.
76. The order makes no reference to the 2006 HHSRS Guidance given to local housing authorities in England by the Secretary of State under section 9 of the Act, which the council is required to have regard to it in exercising their duties and powers under Part 1 of the Act, and consider when formulating their own policy. The council does not have a written policy on HHSRS enforcement, and the oral evidence provided by Ms Williams of an unwritten, internal policy, which is not transparent, and which pays no apparent regard to the 2006 HHSRS Policy, was not something the Tribunal could find was policy that the Tribunal should consider.
77. We have considered the relevant sections of the 2006 HHSRS Guidance below and do not consider that the council paid sufficient (or in some instances, any) regard to those paragraphs for the reasons set out below.
78. A prohibition on human habitation is a draconian measure. However, it may be appropriate where the conditions present a serious threat to

health or safety and remedial action is considered unreasonable or impractical for cost, or other reasons, such as where work cannot be carried out to remedy a serious hazard with the tenant in residence. However, this needs to be balanced against the risk attendant on excluding a vulnerable person from their accommodation. Consideration should be given to gradual improvements with a view minimising risk and inconvenience (2006 HHSRS Guidance paragraphs 4.14, 5.21 and 5.23). There is no evidence of any attempt to balance the hazards against the risks of excluding Rebecca from the property. A phased approach which addressed the more serious hazards first was not considered.

79. For category 1 hazards an improvement notice will be an appropriate means of mitigating a hazard, where works of mitigation are practicable and the occupants are vulnerable (Paragraph 4.12). There is mixed opinion on whether the remedial works could be carried out without vacant possession. Mr Ahmed thought it was practicable to do so stating at paragraph 8 of the order: *“Most of the works could be undertaken with relative ease and would be possible whilst the tenants remain in occupation”*. He also states: *“However, given the tenant vulnerability it will be difficult for the contractors to carry out the works”*. Difficult but perhaps not impossible. No consultation with Rebecca took place. She does not think it would be necessary to vacate. It is extraordinary that there was no discussion of this important point at the time the order was made.
80. Authorities should take some account of the views of occupants. Where there are concerns about vulnerable occupants, authorities should consult other relevant agencies to agree an appropriate response to hazards (Paragraph 4.15). There was no engagement with the other agencies. They were notified of the possible eviction. That was all.
81. There was no meaningful discussion with Rebecca, her lawyer or the relevant agencies which support her to live independently. Housing Options were alerted to the possibility of Rebecca being made homeless after the enforcement decision was made. There was no attempt to consult with the agencies beforehand in accordance with the 2006 Guidance and no meaningful attempt to canvass Rebecca’s views. She expressed a view but there is no evidence it was considered.
82. There were no assessments of Rebecca’s needs and requirements and no focussed effort to allocate suitable alternative accommodation as required under section 6 of the Equality Act 2010 and the 2006 HHSRS Guidance. The email correspondence between various council departments is quite lamentable in its lack of urgency or focus on the needs of a very vulnerable person. The council’s PRS appeared to have little understanding of the council’s duties and responsibilities to vulnerable groups and even less understanding or interest in the effect of their decisions on vulnerable occupiers. It simply wasn’t their job to care about what happened to Rebecca.

83. There was also a concerning lack of any proper consideration of the relevant parties' respective liabilities under the lease. The lease states quite clearly that the freehold landlord is responsible for keeping the structural parts of the building in repair (see paragraph 3 above). The leaseholder is responsible for internal repairs. Mr Ahmed did not understand the lease and although he had recourse to a large legal department, he chose not to consult it, for no apparent reason. Instead, he accepted what the freeholder told him at face value. Mrs Williams made an assumption that the freeholder would prove difficult to bring to heel and decided not to require it to do anything. The quicker, easier option of prohibiting habitation of the flat was selected.
84. The order requires no action by the estate of Peter Grimes. The administrator (and lender) would gain vacant possession without further action. The immediate and real consequence is for Rebecca who will lose accommodation that has supported her independence for the past 17 years.
85. The Tribunal do not accept there was any real confusion as to which flat the lease relates to, or who was the competent landlord and tenant under the lease of Flat 7. The incorrect outlining of Flat 7a on the lease plan was an obvious mistake which can be simply rectified by an appropriate application to the land registry (which the lender has in hand). The owner of Flat 7a has not at any time claimed to own Flat 7. Rae Grimes has obtained a grant of probate which includes Flat 7 as part of the estate of Peter Grimes. Rent is being paid by DWP to the estate. There is no suggestion that it should be paid to anyone else. The fact that relatives and/or friends of Rae Grimes might have said she is not interested in managing the flat does not absolve her of responsibility for the administration of the estate assets, which includes proper maintenance of Flat 7.
86. These are not difficult issues for one of the largest city councils in Europe, with a sizable legal team at its disposal, and a budget reputedly in excess of £3 billion. The internal restrictions the council has placed on expenditure is not relevant. As correctly pointed out by Ms Williams the section 114 notice does not affect the council's statutory duties. What the council does with its budget is a matter of choice.

Determination

87. We are required to determine the application afresh having afforded great respect to the council's original decision and the reasoning behind it. We are restricted to consideration of those matters which were known to the Council on 1 October 2024, and those of which it may have been unaware, but which tend to show the council's decision was right or wrong at the time it was made.
88. The principal reason stated in the order (or more correctly, in one version of the order) for not selecting an improvement notice was that it would be difficult to compel the owners to comply with the law. The

council's concerns about this are not set out in the order but can be deduced from the council's witness statements.

89. On 1 October 2024 the council had no reason to assume that Rae Grimes would not comply with an improvement notice, the anecdotal evidence of incapacity was not before it. Letters of Administration issued on 3 May 2022 to Rae Grimes show a net estate value of £111,900.00. More than sufficient to meet the costs of any default works.
90. The council had no reasonable grounds on which to assume the freeholder would challenge an improvement notice. Its liability was clear on the face of the lease, and the council was wrong to make assumptions without clarifying the legal position with its own legal department. The freeholder should have been served with an enforcement notice. In any event a property owners' reluctance to comply with a notice is not a reason to let it off the hook. Particularly when in so doing the needs of a vulnerable occupier are ignored.
91. For the reasons set out above, and having regard to the 2006 HHSRS Guidance, and the reasons for the council's decision we are persuaded that a prohibition order was not the most appropriate enforcement action in this case.
92. The most appropriate enforcement action would have been to serve on the freeholder and the estate of Peter Grimes an improvement notice. The two estate owners could have raised any defence they believed was available, which would have quickly identified any real issue concerning who was the most appropriate person to carry out the works and whether it was practicable for them to be carried out with a vulnerable tenant in occupation. An initial informal approach could also have been considered which would have identified the same issues.
93. If the works were not carried out to the council's satisfaction it could exercise discretion to carry out works in default and re-charge the costs to the recipients of the order. The evidence shows that the most urgent works, that is the bathroom floor, and sanitary ware could be carried out at a comparatively modest cost. It is true that the owners could challenge or seek to evade their liability, but as both are proprietors of registered titles the council could secure the costs by way of a registered charge. This undoubtedly risks the council having to manage the works but that is the purpose of the legislation. It is there to protect occupiers from health and safety risks; it gives power to the council to carry out urgent work in default. In this case the owners appear to have been let off the hook by a prohibition order because that was an easier option for the council.

Validity of the order

94. The Tribunal has considered submissions on the validity of the order. There is certainly an argument for saying that the council failed to serve the order on the parties specified in paragraph 2(2) of Schedule 2. The

order was not served on the freeholder or the leaseholders mortgagee. The other occupiers may have been served by a copy having been fixed to the premises but when asked about this Mr Ahmed did not confirm service had been effected in this way.

95. There are defects in the order itself. It refers to the premises being a first floor flat. An obvious mistake that is not particularly misleading. However, two versions of the order were issued and served on different recipients (referred to in paragraph 22 above). The difference between the orders is not trivial. It is material to understanding the reasons for the council's selection of a prohibition order as being the most appropriate enforcement action; it creates confusion because the relevant objective cited is not the same in the different versions (referred to in paragraph 16(b) and (c) above). Mr Ahmed accepted there was a mistake but was not sure which was the correct version. The Tribunal has already rejected the council's reasons for not selecting an improvement notice as the most appropriate enforcement action. We have not therefore gone on to determine whether errors in service of the order render it invalid or whether the inconsistent wording of the order versions are sufficiently misleading for it to be considered invalid.

Costs

96. The Applicant has made an application for wasted costs in relation to the first hearing. A separate decision will be issued on that application.

D Barlow
Deputy Regional Judge

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).