



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

**Case Reference** : **BIR/00FN/HPR/2024/0602**

**Property** : **Rear Flat (Located in rear yard) 32 Beatrice Road  
Leicester LE3 9FD**

**Applicant** : **Jaspal Singh Kullar**

**Respondent** : **Leicester City Council**

**Type of  
Application** : **Appeal against a decision of the  
Respondent to refuse to vary or revoke a  
Prohibition Order under Paragraph 9(1)  
of Schedule 2 to the Housing Act 2004**

**Tribunal Members** : **Nicholas Wint FRICS, David Satchwell FRICS  
& Alan McMurdo MCIEH**

**Date of Inspection  
and Hearing** : **7 May 2025**

**Date of Decision** : **09 January 2026**

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**DECISION**

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## **Decision of the Tribunal**

1. The Tribunal orders that the Prohibition Order dated 30 September 2024 is upheld.
2. In the light of the above, the appeal made by the Applicant against the Prohibition Order under Paragraph 9(1) of Schedule 2 to the Housing Act 2004 is therefore dismissed and not allowed.

## **Reasons for the Decision**

### **Introduction**

3. On 27 September 2024, Leicester City Council, the Local Housing Authority and Respondent made a decision in respect of a Notice of Variation/Revocation of Prohibition Order, under section 25 of the Housing Act 2004 regarding the Rear Flat (Located in rear yard) 32 Beatrice Road Leicester LE3 9FD. The Notice was signed on 30 September 2024.
4. On 25 October 2024, the First-tier Tribunal (Property Chamber) received an application from Mr J S Kullar ('the Applicant'), under paragraph 9 of Schedule 2 to the Housing Act 2004 ('the Act'), to appeal against the decision of Leicester City Council ('the Respondent') to refuse to vary or revoke the Prohibition Order dated 11 October 2021 ('the Prohibition Order') for the property known as rear flat (located in the rear yard) 32 Beatrice Road Leicester ('the Property').
5. The Applicant's application stated that the Property was developed and had been used for over 8 years and is subject to a Prohibition Order based primarily on concerns regarding its size. The Applicant accepted the Property was small but was of the opinion it did not justify a prohibition especially given its long-standing use and compliance with safety standards. The Applicant had undertaken various works and modifications to the Property and its living space. The Applicant also stated that all safety hazards (excess cold, fire risk, and others) had been resolved.
6. Paragraph 10 (1) of Part 3 Schedule 2 to the Housing Act 2004 states:  
*10 (1) Any appeal under paragraph 7 must be made within the period of 28 days beginning with the date specified in the prohibition order as the date on which the order was made.*
7. The Tribunal issued its Directions and requested the Applicant and Respondent prepare and submit their Statements of Case and Replies setting out all matters of fact and law to be relied upon in relation to the service of the Notice.
8. The Applicant requested a hearing which was held on 7 May following the tribunal's inspection on the same day.
9. As background, the Respondent served a letter on the Applicant dated 11 October 2021 enclosing the Prohibition Order (effective from 8 November 2021) prohibiting the use of the rear flat (located in the rear yard) together with a

Schedule to the Order explaining what action could be taken to lift the Order and setting out a statement of reasons as to the course of action decided upon.

10. The reasons stated that the Respondent considered the service of an Improvement Notice was not the most appropriate action to deal with the category 1 hazard identified in the premises. Given the nature of the hazard and the risk it poses the Respondent considered it would not warrant a Hazard Awareness Notice as this was also not considered appropriate. The Respondent also considered the hazard did not pose an imminent risk to health and safety as the flat was vacant so taking Emergency Remedial Action or making an Emergency Prohibition Order was also considered not appropriate. The Respondent also found no good reasons to serve a Suspended Improvement Notice or Suspended Prohibition Order for a period of time and given the high value of the property and high demand felt demolition or clearance was also not an appropriate course of action.
11. The Respondent concluded that as a category 1 hazard existed at the property and that there was no realistic solution to satisfactorily remedy the situation and that it was not safe for persons to continue to live at the property it was decided that it was reasonable to prohibit the use of the property. The Respondent therefore decided the most effective means for dealing with the hazard was to serve a Prohibition Order.
12. The Schedule attached to the Order made under section 20 of the Housing Act 2004 identified the nature of the hazard as being a category 1 hazard:
  1. Overcrowding and space giving rise to the hazards of lack of space in the dwelling and that no remedial action would address these issues was feasible.
  2. Excess cold arising from the lack of electricity supply rendering the heating non-functional and that the following remedial action if taken by the Applicant would revoke the Order:
    - Reinstate electricity supply
    - Written confirmation sent to the Respondent that the electricity supply had been reinstated
    - Arrange for electricity supply to be inspected, rewire if necessary and provide to the Respondent a signed electricity Installation Condition Report stating it has been tested and safe for use
    - All persons carrying out the testing and works must be competent and a member of a scheme such as NICEIC
  3. Fire arising from the lack of an electricity supply rendering the fire detection non-functional and that the following remedial action if taken by the Applicant would revoke the Order:
    - Reinstate electricity supply
    - Written confirmation sent to the Respondent that the electricity supply had been reinstated
    - Arrange for electricity supply to be inspected, rewire if necessary and provide to the Respondent a signed electricity Installation Condition

- Report stating it has been tested and safe for use
- All persons carrying out the testing and works must be competent and a member of a scheme such as NICEIC
4. Falling on level surfaces arising from the lack of artificial lighting due to the absence of an electricity supply resulting in the increased risk of a person having a serious accident whilst moving within the property and that the following remedial action if taken by the Applicant would revoke the Order:
    - Reinstate electricity supply
    - Written confirmation sent to the Respondent that the electricity supply had been reinstated
    - Arrange for electricity supply to be inspected, rewire if necessary and provide to the Respondent a signed electricity Installation Condition Report stating it has been tested and safe for use
    - All persons carrying out the testing and works must be competent and a member of a scheme such as NICEIC
  5. Falling on stairs arising from no artificial lighting at the property due to the absence of an electricity supply resulting in a person having a serious accident whilst using the stairs and that the following remedial action if taken by the Applicant would revoke the Order:
    - Reinstate electricity supply
    - Written confirmation sent to the Respondent that the electricity supply had been reinstated
    - Arrange for electricity supply to be inspected, rewire if necessary and provide to the Respondent a signed electricity Installation Condition Report stating it has been tested and safe for use
    - All persons carrying out the testing and works must be competent and a member of a scheme such as NICEIC
  6. Food safety arising from a lack of hot water for washing of equipment, no means of storage and the cooking of food and prevention of food poisoning due to the absence of an electricity supply and that the following remedial action if taken by the Applicant would revoke the Order:
    - Reinstate electricity supply
    - Written confirmation sent to the Respondent that the electricity supply had been reinstated
    - Arrange for electricity supply to be inspected, rewire if necessary and provide to the Respondent a signed electricity Installation Condition Report stating it has been tested and safe for use
    - All persons carrying out the testing and works must be competent and a member of a scheme such as NICEIC
  7. Personal hygiene, sanitation and drainage arising from the absence of an electricity supply resulting in poor personal hygiene and the potential spread of infection and that the following remedial action if taken by the Applicant would revoke the Order:

- Reinstatement of electricity supply
  - Written confirmation sent to the Respondent that the electricity supply had been reinstated
  - Arrange for electricity supply to be inspected, rewire if necessary and provide to the Respondent a signed electricity Installation Condition Report stating it has been tested and safe for use
  - All persons carrying out the testing and works must be competent and a member of a scheme such as NICEIC
13. On the 9 September 2024 the Respondent received an application from the Applicant seeking to revoke the Order. The Respondent considered there were special circumstances making it appropriate to revoke part of the Order under section 20 of the Housing Act 2004. The electricity supply had been reinstated and an electrical installation condition report had been submitted which confirmed the installation was safe to use and therefore eliminating the following hazards:
- Excess cold
  - Fire
  - Falling on level surfaces
  - Falling on stairs
  - Food safety
  - Personal hygiene, sanitation and drainage
14. The Respondent therefore found it appropriate to revoke part of the Order under section 20 of the Act but found that the issue relating to overcrowding and space remained despite the Applicant having opened the partition wall as there remained a lack of useable floor area to accommodate sufficient sleeping, living and dining areas. The Respondent remained of the view that there was no remedial action capable of resolving the issue concerning overcrowding and space.

### **The Law**

15. The Act introduced a new system for the assessment of housing conditions and for the enforcement of housing standards. The Housing Health and Safety Rating System ('HHSRS') replaced the system imposed by the Housing Act 1985, which was based upon the concept of unfitness.
16. Where the application of the HHSRS identifies a category 1 hazard, the local housing authority has a duty under section 5 (1) of the Act to take appropriate enforcement action. Section 5 (2) sets out the courses of action (which include making a prohibition order) which may constitute appropriate enforcement action. Under section 25 (8)(a) of the Act, the local housing authority has a power to revoke or vary a prohibition order upon an application made by a person on whom a copy of the order was required to be served.
17. An owner of the whole or part of the specified premises may appeal the local authority's decision relating to the revocation or variation of a prohibition order under paragraph 9 of Schedule 2 to the Act, which provides –

*“A relevant person may appeal to the appropriate tribunal against–*

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

18. The powers of a tribunal on appeal under paragraph 9 are detailed in paragraph 13 of Schedule 2 of the Act, which provides –

- “(1) This paragraph applies to an appeal to the appropriate tribunal under paragraph*
- (2) Paragraph 11(2) applies to such an appeal as it applies to an appeal under paragraph 7.*
- (3) The tribunal may by order confirm, reverse or vary the decision of the local housing authority.*
- (4) If the appeal is against a decision of the authority to refuse to revoke a prohibition order, the tribunal may make an order revoking the prohibition order as from a date specified in its order.”*

And Paragraph 11 (2) provides –

- “(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.”*

## **Hearing**

- 19. A hearing was held on 7 May 2025 following the Tribunal’s earlier inspection that day.
- 20. The Applicant was represented by Mr Miah of Crystal Law. Mr Reid represented the Respondent.
- 21. At the hearing a preliminary matter was raised concerning the late submission of the Applicant’s witness statement. The Applicant stated that the matters contained therein were all factual matters and should be permitted. The Respondent challenged this but the Tribunal accepted the reasons given and granted permission for the Applicant to rely on its witness statement.

## **Submissions**

### **Applicant**

- 22. The Applicant submitted a statement of case dated 11 December 2024 and a witness statement dated 7 May 2025 from Mr Kullar.

23. Mr Kullar's witness statement set out that he had purchased the property sometime in 2014 and at the time the rear flat was in situ although the building was in disrepair and received a building control notice for the works to the rear of the flat on 25 April 2014. These works were undertaken and completed in 2015.
24. In 2015 the property was let to a Housing Association/ Supported Living and that the property had been inspected for its suitability by the Respondent. The Applicant stated that whilst the property was being used as such the Respondent did not have an issue concerning its suitability and that since receipt of the Prohibition Order in October 2021 the property had been vacant.
25. The Applicant stated that the property had been developed over a number of years for residential use without any previous incidents. The Applicant disputed the Respondents claim that the alleged category 1 hazard relating to overcrowding and space was based on outdated assessments and did not reflect the property's current status or its use.
26. Under section 20 & 25 of the Housing Act 2004 a local housing authority is obliged to revoke a prohibition order if satisfied the hazard no longer exists. In the Applicants view the alterations carried out to the property were sufficient to comply with the statutory requirements and eliminate the hazards.
27. The Applicant referred to the authority of Wandsworth London Borough Council v Singh [2015] EWHC 2072 where it was held that enforcement decisions must be proportionate and tailored to the nature of the hazard.
28. The Applicant referred to the guidance under the Town & Country Planning (Use Classes) Order 1987 which refers to short term rentals and the guidance under the Housing Act 2004 which provides that smaller spaces may be adequate for short term occupancy.
29. The Applicant also referred to the application for a Lawful Development Certificate where under Fordham v SOS for Communications and Local Government [2014] EWHC 3054 determined that a pending lawful development certificate could influence enforcement actions and therefore the two should be considered together.
30. Also, section 192 of the Town & Country Planning Act 1990 allows for an application for a Lawful Development Certificate to establish whether the existing use of a building is lawful and should be considered in any planning or enforcement decision.
31. In the opinion of the Applicant, the property's small size should not preclude it form certain types of use such as short term lets. The Applicant stated it had carried out alterations to the property to open up the partition between the bedroom and kitchen areas which should satisfy the statutory requirements.
32. As the Applicant submitted an application for a Lawful Development Certificate to the local authority the Applicant considered this should be taken into consideration concerning the enforcement action and whether the property is compliant with the planning regulation to allow its continued use.

33. In the Applicants skeleton argument prepared by Mr Miah dated 7 May 2025, the landlord contended that the use of the flat had become lawful due to the passage of time rendering enforcement action inappropriate and that the Nationally Described Space Standards (NDSS) had not been adopted by the Respondents and were not therefore enforceable. Further the Applicant is willing to impose a single occupancy restriction per let with a maximum duration of 9-12 months.
34. The Applicant also referred to the Town & Country Planning Act 1990 and section 171B(2) which specifies that where a breach has occurred regarding a change of use to use as a single dwellinghouse no enforcement action may be taken after the end of a period of 4 years beginning with the date of the breach and section 191(2) of the Act which details that uses and operations are lawful if (a) no enforcement action may be taken (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason.
35. The Applicant also set out that the property had been in continuous use since 2015 without any enforcement action taken and the enforcement action taken by the council was too late. Nor had the Applicant at any time sought to conceal the use of the flat. The Applicant was also prepared to impose a restriction limiting the flat to a single occupancy per let with each tenancy not exceeding 9 or 12 months suggesting this would alleviate the space and overcrowding issues. The Applicant therefore concluded that the appeal should be allowed and the Respondent should revoke the Prohibition Order.
36. The Applicant was therefore of the view that the Order should be revoked allowing the property to be continued to be used for residential purposes.

### **Respondent**

37. The Respondent submitted a statement of case dated 26 November 2024. The Statement of Case included a witness statement made by Mr H Parmar dated 14 November 2024.
38. It was the Respondents case that as the area of the property extends to 8.26 sq.m. of which the living and sleeping areas are 3.85 sq.m. based on the hazard assessment undertaken by Mr Pamar this gave rise to a category 1 hazard in accordance with the HHSRS Operating Guidance.
39. The Respondent accepted the Applicant had made some changes to the layout (extending to widening the opening to the partition wall) but suggested that these are minimal and have no effect on the overall area and there remains insufficient living/ sleeping space and inadequate provision for the storage and preparation of food.
40. Mr Parmar's witness statement confirms he is employed as a Property Inspector in the Selective Licensing Team of Leicester City Council. Mr Parmar had also completed a training course in assessing hazards under the HHSRS in 2022.
41. Following receipt of the Applicants request for the Respondent to revoke the

Order the matter was passed to Mr Parmar to arrange an inspection of the Property and a meeting with the Applicant which was held on 24 September 2024. Mr Parmar visited the property to determine whether sufficient works had been undertaken to eliminate the hazards identified in the Prohibition Order and therefore for it to be revoked.

42. Mr Parmar found at his inspection that the electricity supply had been reinstated and the hazards in relation to excess cold, fire, falling on level surfaces, falling on stairs, food safety, personal hygiene, sanitation and drainage. However, the partial removal of the partition between the bedroom and kitchen/ dining area did not increase the useable floor area and therefore Mr Parmar determined that the hazard in relation to space and crowding remained. Mr Parmar measured the property whilst on site and calculated that the total floor space of the living/ sleeping area was 3.85 sq.m.. This is smaller than the minimum room size of 4.65 sq.m. for a child under 10 years of age as specified in the Housing Act 1985. Mr Parmar considered as this area was to be used for living, sleeping, eating and storage it was insufficient and unacceptable.
43. As regard the kitchen area the DASH guidelines recommend a double wall unit for each occupant for food storage. None were however fitted. There was only one extra electrical socket in the kitchen which Mr Parmar also found inadequate. There was also insufficient food preparation space.
44. Mr Parmar referred to the DASH guidelines concerning a single occupier in an HMO which required a minimum 10 sq.m or if there was sufficient living or dining space elsewhere within the building then the minimum size requirement would be 8 sq.m.
45. Based on the above Mr Parmar considered the internal area of the property to be too small. Mr Parmar assessed the hazard using the HHSRS Guidance (Hazard No. 11 – Crowding & Space). Mr Parmar calculated a score of 1117 (Band C) which was a category 1 hazard under the Housing Act 2004. In Mr Parmar's view this was a significant risk and too high to justify the revocation of this hazard the Prohibition Order and determined that there was no practicable or feasible solution to eliminate the hazard.
46. As a result, Mr Parmar issued a Revocation and Variation Order (Form 10, Housing Act 2004, section 25) in relation to all the hazards explaining to the Applicant the reason for issuing a Variation Order dated 30 September 2024 with the exception of the hazard in relation to crowding and space which remained in effect.

### **Inspection**

47. The Tribunal inspected the Property on 7 May 2025 in the presence of the parties representatives - Louise Wright, Hiten Parmer, Mr Miah, Raja Hopphi, Sebastian Reid and Mina Ghumunra.
48. The Property formed a single-storey flat roofed building located off Beatrice Road accessed via a side passageway.

49. The accommodation was very basic and comprised an open plan bedroom with through kitchen/ dining area and separate toilet with wash hand basin and separate shower. The kitchen included a hob, oven, sink, one base unit and an extraction unit.
50. The walls were not cavity but the windows were double glazed. Heating was provided by a wall mounted electric heater.
51. The Tribunal noted areas of penetrating damp in parts of the property and staining to the ceiling which appear to be from water penetration.

### **Inspection findings and Tribunal's Deliberations**

52. Following the inspection, and hearing the Tribunal considered its findings taking into account all of the evidence submitted by the parties, both oral and written concerning the remaining issue of lack of space and overcrowding that remained in the Prohibition Order.
53. At the hearing the Tribunal heard evidence from Mr Parmar who confirmed he had not inspected the property in 2021 and that this had been carried out by his predecessor, Mr Elliott. There also appeared to be some confusion over the numbering of the flats and the subject property however this was addressed. Mr Parmar confirmed it was his understanding that the property's address was No. 32A although was not identified correctly on the plans and was unaware as to why this was so. The council did not have any records prior to 2014 or any records to show the property was there prior to 2016.
54. The Tribunal carried out its own measurements at its inspection and asked Mr Parmar if he had noted that there was a step in the wall in the living room which would make the floor area slightly larger than he had calculated. Mr Parmar acknowledged this and accepted that his areas may have been slightly understated.
55. Mr Parmar acknowledged that the electricity supply had now been reinstated and as a result all the hazard categories had been resolved except space and overcrowding which remained. Mr Parmar was questioned on the lack of storage space and the Decent & Safe Homes (DASH) East Midlands – A Landlords Guide guidelines which recommends a double wall unit for each occupant which was lacking. Mr Parmar was also questioned about the lack of electrical sockets but noted that there was a socket behind the sink which was available for a fridge although reference to DASH recommends electrical sockets to be located above/ over worktop counters and therefore did not comply with the requirements.
56. Mr Parmar was also questioned about the lack of preparation space and that DASH's requirements were that worktop space must be a minimum 500mm and a length of 1 m per person. There was therefore insufficient worktop space despite the single occupancy of the property. Mr Parmar was questioned about the DASH Guidance and whether this guidance was being implemented by the council which he confirmed it was.

57. Mr Parmar was also questioned about the dining area and the 'walkway' in the kitchen which left insufficient space for a dining table especially if a fridge was in situ.
58. The Applicants position is that this is a planning issue and the Prohibition Order should not apply. When questioned about the Applicants position and that this dispute should fall under s171B(2) of the Town & Country Planning Act 1990 (TCPA) and therefore no enforcement action could be taken as more than 4 years had elapsed Mr Parmar advised that this was not a planning issue and did not apply to the current situation.
60. The Applicant referred to *Thurrock Borough Council v Secretary of State for the Environment* and another [2002] ALL ER (D) 373 which concerned an appeal against an enforcement notice for a change of use of land from domestic/agricultural purposes to domestic and an airfield. The Applicant stated that there is a statutory requirement (s172(1) of the TCPA 1990) to the effect that any enforcement proceedings must be taken within a period of 10 years from the date of breach of planning control and that the inspector found the proceedings were time barred and quashed the notice. The appeal submitted by the council was therefore to determine whether this decision was correct. The appeal was dismissed on the basis that the rationale behind the immunity from enforcement proceedings contained in s171B(3) of the 1990 Act was that the council had failed to take any action during the period of unlawful use.
61. Mr Parmar was questioned about the HHSRS score. He advised the Tribunal that this was originally conducted by Mr Elliott, his predecessor. The purpose of Mr Parmar's subsequent inspection was to review the Order with a view to revoking it following the Applicants works that were undertaken. He found that when he reviewed the rating he did not find any reason to disagree with Mr Elliot's original assessment.
62. Mr Parmar confirmed the property was vacant at the time of his inspection and was asked why he had assessed the property based on a national average of 1 in 8000. He advised the Tribunal he had categorized the property as a 1930's flat.
63. Mr Parmar was asked why he had categorized the likelihood of harm 1 in 75 and he responded by advising he considered the lack of space and over crowding could lead to issues surrounding well-being, mental issues, stress and anxiety. In Mr Parmar's opinion the living area was so small it was unreasonable to expect anyone to live there even if it was for a short term only.
64. Mr Parmar was then challenged on how he arrived at the likelihood score. He responded by advising the Tribunal he considered an occupant and how they would be able to live there. Mr Parmar was then asked how he came to pick the numbers in the scale and he advised he approached it with leniency but thought it was severe enough to give it 100. This, he said was based on his personal opinion and the DASH guidance.
65. Mr Parmar was also asked why he had not used the Housing Act 1985 Part X - to consider the overcrowding issue. Mr Parmar advised he had based it on a child

under the age of 10 years and that from this the space was clearly insufficient.

66. Mr Parmar was then asked about how he considered the second stage and the occupancy limits. Mr Parmar responded by advising that he had relied on the recommendations in the HHSRS operating guidance and that the score was based on a single occupancy of the property – in other words the risk-based rating was based on one person occupying the property.
67. Mr Parmar was then challenged on what he had based his scoring on. He informed the Tribunal that he had considered the DASH guidance and HHSRS operating guidance. Mr Parmar was then asked on his assessment of the risk and he advised that this was based on the combined effects of the size of the property and its use as living accommodation. Mr Parmar was then asked about his consideration of shared social spaces but advised that as this is a self-contained flat this did not apply. Mr Parmar referred to the standards required relating to HMO's but accepted that these did not apply to a self-contained flat and that it was difficult to apply the same standards applicable to HMO's.
68. In Mr Parmar's opinion physical separation in rooms was not necessary for self-contained flats. Mr Parmar was pressed on the wording in the Prohibition Order referring to 'no human habitation' and was challenged on this as to whether a short term let or Airbnb let should also be prevented. In Mr Parmar's view he advised that he was simply not satisfied that the limited space and potential overcrowding could be overcome and as a consequence was not prepared to lift the Order.
69. The Act confirms that the Tribunal may, by order, confirm, reverse or vary the decision of the local housing authority. The parties disagree as to the approach taken and the assessment of the hazard. The Respondent in serving a Prohibition Notice is preventing the property from being used for human habitation on the grounds that it is too small in size for any occupier and to such an extent that a category 1 hazard exists. It is clear to the Tribunal that the Respondent considered the hazard serious enough to require the Prohibition Order to remain in force in relation to the matter of space and overcrowding despite lifting the Order in respect of the other matters.
71. The principal focus for the Tribunal's consideration therefore is the specific hazard of space and overcrowding and whether this hazard is sufficiently serious to warrant a Prohibition Order and is this the best course of action for the Respondent to have taken.
72. It is accepted that Part 1 of the Housing Act deals with housing conditions and Chapter 1 contains a system (HHSRS) for assessing housing conditions and enforcing housing standards. The HHSRS is used to assess the condition of residential premises and identify various hazards and for calculating their seriousness as a numerical score by a method prescribed by the Housing Health and Safety Rating System (England) Regulations 2005. These regulations prescribe the descriptions of category 1 and category 2 hazards and a method for scoring their seriousness.

73. The 2005 Regulations prescribe the descriptions of category 1 and category 2 hazards, as well as prescribing the method for scoring their seriousness. Regulation 2 defines “harm” as harm within any of Classes 1 to IV as set out in Schedule 2. The Schedule provides that Class 1 harm is “such extreme harm as is reasonably foreseeable as a result of the hazard in question, including -”, and then are set out “(a) death from any cause” and, from (b) to (g), lung cancer, malignant tumours, permanent paralysis below the neck, regular severe pneumonia, permanent loss of consciousness and 80% burn injuries. Class II harm is “severe harm” (including, for example, cardio-respiratory disease and serious burns). Class III harm is “serious harm” (including, for example, chronic severe stress). Class IV is “moderate harm” (including, for example, regular serious coughs and colds).
74. Regulation 3(1) provides that a hazard is of a prescribed description for the purposes of the 2004 Act where the risk of harm is associated with any of the matters or circumstances listed in Schedule 1. The list includes: “11. Crowding and Space”; “19. Falls associated with baths etc.”; “20. Falling on level surfaces etc.”; “24. Fire”; “26. Collision and entrapment”; and “28. Position and operability of amenities etc”.
75. Regulation 7 prescribes bands of hazards from A to J on the basis of a range of numerical scores. A Band A hazard is one with a numerical score of 5000 or more; a Band B hazard is one with a numerical score of 2000 to 4999; and a Band C hazard is one with a numerical score of 1000 to 1999. Regulation 8 provides that a hazard falling within band A, B or C is a category 1 hazard and that a hazard falling within any other band is a category 2 hazard. The numerical score for a hazard is reached in a number of steps prescribed by regulation 6. First the inspector is required to assess the likelihood, during the period of 12 months beginning with the date of assessment, of a relevant occupier suffering any harm as the result of that hazard as falling within one of a range of 16 ratios of likelihood that are set out. For each range there is also set out a representative scale point of range (L, as it is called in a formula that later falls to be applied). For instance, in the range of ratios of likelihood between 1 in 4200 and 1 in 2400 the representative scale point of range is stated to be 3200.
76. Who is a “relevant occupier” is defined in regulation 6(7) by reference to particular matters contained in Schedule 1. For paragraph 11 (Crowding and Space) the relevant occupier is the actual occupier. For most of the other hazards mentioned above, the relevant occupier is an occupier aged 60 years or over. The exception is Collision and entrapment, for which it is generally an occupier under the age of five years.
77. The second step requires the inspector to assess which of the four classes of harm a relevant occupier is most likely to suffer. Thirdly they must assess the possibility of each of the three other classes of harm occurring as a result of that hazard, as falling within a range of percentages of possibility. For each range there is also set out a representative scale point of the percentage range (RSPPR). Thus, for instance, for the range 0.15% to 0.3% the RSPPR is 0.2%.
78. Step four requires the inspector to bring the total of RSPPRs for the four classes

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

79. Step five is the production of a numerical score for the seriousness of the hazard for each of the four classes of harm. For each of these, L is multiplied by the RSPPR and then by a further factor, which weights the seriousness of the classes of harm. This factor is 10000 for Class I, 1000 for Class II, 300 for Class III and 10 for Class IV. The final step is to add the four individual numerical scores to produce the numerical score that can be related to the prescribed bands.
80. If a local housing authority makes a category 1 hazard assessment (i.e., it identifies a hazard that scores 1000 or above, so that it falls within Band A, B or C), it is obliged under section 5(1) of the 2004 Act to take appropriate enforcement action – the courses of action which might be “appropriate” in this regard (which include making a prohibition order or serving a hazard awareness notice) being identified in section 5(2). If two or more courses of action are available the authority must take the course which it considers to be the most appropriate.
81. A prohibition order may prohibit the use of a dwelling, an HMO, or a building (or part of a building) containing flats, and it may impose such prohibitions on the use of the premises as the local housing authority considers appropriate in view of the hazard or hazards in respect of which the order is made.
82. The making of prohibition orders is dealt with in sections 20 – 22 of the 2004 Act and a right of appeal is conferred by paragraph 7(1) of Schedule 2. This is a general right of appeal, but a specific ground on which an appeal may be made is that the best course of action in relation to the hazard in respect of which the order was made is serving a hazard awareness notice.
83. An appeal against a prohibition order is to be by way of a rehearing, but may be determined having regard to matters of which the local housing authority was unaware. The Tribunal may by order confirm, quash or vary the prohibition order.
84. Where the grounds of appeal consist of or include the specific ground mentioned in paragraph 82 above, when deciding whether, for example, serving a hazard awareness notice 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 of the 2004 Act. Such guidance has been given in the Housing Health and Rating System Operating Guidance (“the Operating Guidance”) and in the Housing Health and Safety Rating System Enforcement Guidance (“the Enforcement Guidance”), both issued by the Office of the Deputy Prime Minister in February 2006.
85. As stated above, the appeal is by way of a rehearing. The Tribunal’s task is not simply a matter of reviewing whether the Respondent’s decision to make the Prohibition Orders was reasonable. The Tribunal is not limited to checking the Respondent’s HHSRS calculations for mathematical accuracy. Rather, the Tribunal must decide for itself – in respect of the property – whether there is a hazard (or hazards) of the sort the Respondent alleges and whether making a

Prohibition Order was the appropriate action to take. The views of the local housing authority are, of course, relevant and merit respect, but the Tribunal must make its own decision based on all the available evidence and applying its own knowledge of local housing conditions.

86. It is accepted that the Tribunal should not simply attempt to carry out its own HHSRS assessment of the Premises, but that it should deploy its own expertise to take a broader, nuanced approach to risk, and thereby make a common-sense assessment. The Tribunal does not have particular expertise in carrying out HHSRS assessments and, in determining appeals concerning such assessments made by local housing authorities understand it is a question of subjective judgement. The Tribunal, in making a common-sense judgment in relation to the appeal, must still consider the seriousness of any hazard by reference to the HHSRS. Therefore, the Tribunal must determine, in particular, whether there is a category 1 hazard of Crowding and Space. That requires the Tribunal to examine the HHSRS assessment, with a particular focus on the evidence about the appropriate range of likelihood of an occupier suffering any harm as the result of the hazard and from that how serious the health outcome would be. Having determined whether or not there is any such category 1 hazard, the Tribunal must go on to decide what is the best course of action to take, and it should do this having regard to its experience and using common sense.
87. The Tribunal noted that the property was unoccupied and despite this the Respondent took action in serving a Prohibition Order. Neither the Operating Guidance or the Enforcement Guidance preclude the property from being assessed in relation to the hazard of Crowding and Space unless they are occupied. ‘Crowding’ and ‘Space’ are two different concepts, albeit expressed under one particular hazard for the purposes of the HHSRS: whilst it is only possible to assess whether a property is over-occupied by reference to its actual occupancy, the concept of Space (whether a property has adequate space for living, sleeping and normal family/household life) can be assessed by making assumptions about its typical occupation. The Applicant here accepts that the typical occupation of property could be restricted to that of a single adult.
88. The Respondent argued that the Premises are over-occupied and that the space provided is so small as to pose a serious risk to the health and safety of the assumed single adult occupier. We accept that the degree of risk can properly be assessed before the Premises are occupied: indeed, it is clearly prudent to do so. Whilst the views of any actual occupiers could be taken into account, if they are relevant, when deciding upon appropriate enforcement action, there is no requirement that the Premises must be occupied in order to be assessed in the first place, or that the views of occupiers must be taken into account.
89. The provisions of the Operating Guidance and the Enforcement Guidance support the Respondent’s position, rather than the Applicant’s. In particular, paragraphs 11.21 and 11.22 of Annex D to the Operating Guidance state (specifically in relation to the hazard of Crowding and Space):

“11.21 As with all hazards, the initial assessment should be of the dwelling disregarding the current occupants. This should take into account the size and

layout of rooms based on the occupancy level that typically might be expected to use the dwelling.

11.22 Unlike other hazards, a second stage is involved for Crowding. This involves determining whether the dwelling is over-occupied by the current household, taking account of their ages and relationships.”

90. The Prohibition Order did not reveal the individual HHSRS scores or calculations on which the Respondent’s hazard assessments were based. That information was disclosed during the course of these proceedings. The Applicant did not however submit their own HHSRS assessments for the Tribunal to consider.
91. The Respondent assessed the likelihood, during the subsequent period of 12 months, of an occupier suffering harm as the result of the hazard and based on the Operating Guidance, adopted the national average likelihood of such harm in respect of all dwelling types - 1 in 8000. As far as the spread of harm between Classes I – IV are concerned, the Respondent took the view that there was no reason to depart from the average harm outcomes indicated in the Operating Guidance.
92. The property has to serve as a bedroom and sole living area of an occupier and visitors to their home, and the small en-suite shower room/wc is the only facility for the occupier and their visitors to use. The Tribunal finds the space available is too small for sleeping and private daily living functions to be adequately separated. There are a variety of published guidance that suggests that the property is too small to safely accommodate sleeping and private daily living functions. This guidance includes the Nationally Described Space Standard (NDSS), which requires a one-bedroom flat (with a shower) for one person to be a minimum of 37m<sup>2</sup>. It states that a single bedroom must be at least 7.5m<sup>2</sup>. In addition, The National Housing Federation - Housing Standards Handbook and Approved Document M of the Building Regulations, which both contain furniture schedules for dwellings. The property is not large enough to safely accommodate the furniture items and activity spaces recommended by this guidance. So, for example, there is insufficient room for an armchair or a two-seat sofa; a double bed; a free-standing TV; or a coffee table. The property can accommodate a small dining table but not a chair and there is no separate dining space in the kitchen. Realistically, only a limited amount of bedroom furniture can be safely accommodated. Furthermore, the en-suite shower-room/wcs are also extremely small, claustrophobic and inadequate in terms of the amount of activity space they provide.
93. A lack of space and overcrowded conditions have been linked to a number of health outcomes, including psychological distress and mental disorders. Being confined to a single cramped room for the majority of your time whilst at home in which there is insufficient space to separate different household activities, safely arrange/utilise basic items of furniture, store personal belongings or entertain visitors in safety and comfort would be extremely distressful for an occupier and consequently severely affect mental health. The resultant anxiety and distress and the likelihood of a psychological harmful occurrence over a 12-month period caused by living in such a small room is much higher than average.

94. The Tribunal found the property to be very small. We noted during our inspection that, the property provided minimal space for moving around, for everyday activities such as dressing and eating meals, or for storing possessions. Nor does the property appear to offer adequate space or facilities for the occupier to entertain visitors, whether overnight or otherwise: there is only room for minimal furniture.
95. The question, though, is whether the lack of space within the property for living, sleeping and normal family/household life is such as to pose a risk of harm (i.e., an occurrence resulting in outcomes which would or should require some medical attention – a visit to a doctor or a hospital) to the health or safety of a potential occupier? “Health”, for these purposes, means an individual’s state of physical, mental and social well-being. It is not limited to the presence or absence of disease, infirmity or physical injury, but includes psychological injuries and distress. The Applicant appears not to accept that the Premises fail to satisfy these basic standards.
96. The Tribunal considers all of the above to be of relevance in informing the assessment of risk in this case. The Tribunal is aware that the NDSS has been in operation since 2015, having been drawn up by the government with advice from industry experts. It is a national, cross-tenure, space standard, administered through the planning system. Whilst it is not mandatory, the NDSS is the current, minimum space standard against which homes of all types and tenures (including new-build and conversions, and flats, bedsits and HMOs) may be objectively assessed. It is clearly a relevant modern benchmark to consider when assessing the hazard of Crowding and Space. Nor does the Tribunal see any issue to the consideration of furniture as an aid to assessing whether a room is large enough to safely accommodate the basic furniture items which might reasonably be deemed necessary.
97. The Tribunal accepts that the property does not meet these standards. It is important to stress that this finding, of itself, does not necessarily lead us to conclude that there is a category 1 hazard of Crowding and Space. However, it is a strong indication that the likelihood of an occupier suffering any harm as a result of a Crowding and Space hazard must be considerably greater than the national average for all dwelling types. For this reason, we do conclude that Respondents assessments are correct.
98. It is, of course, difficult to determine how much greater than the national average the risks posed by the property actually are. Ultimately, this is a largely subjective assessment. Nevertheless, evidence in the form of an assessment under HHSRS are calculated to provide a form of consistency of hazard rating.
99. The Tribunal therefore agrees with the Respondent in its assessment of the risk and hazard arising from Over-Crowding and Lack of Space. The Tribunal is satisfied that the small size and layout of the Premises is such as to increase the likelihood of harm (compared with the national averages for all dwelling types) resulting from the identified category 1 hazards. The Applicant argued that, even if the hazards in the property are as serious as the council says they are, the

Respondent should not have responded by making the Prohibition Order. The Applicant considered the best course of action (whether under section 5 or section 7 of the 2004 Act) in relation to the hazard(s) concerned is to lift the Order in its entirety following the works that have been undertaken to the property.

100. The Tribunal also disagrees with the Applicant that the Respondent is time barred under the Town & Country Planning Act 1990 and given the Tribunal's findings and the seriousness of the category 1 Crowding and Space hazards which we find to exist on the property, we conclude that prohibiting residential use in their current form is clearly the best course of enforcement action for the Respondent to take.
101. For the above reasons, we confirm the Prohibition Order dated 25 October 2024 and we dismiss the appeal.

### **Costs**

102. The Respondent submitted a schedule of costs to the Tribunal prior to the hearing. The schedule identified two category A fee earners at £282 and £255 per hour respectively. Letters/ emails to the Respondent were costed at £537, letters and emails to the Opponent were costed at £537 and letters and emails to others at £537 and telephone calls at £282 totaling £2,089.20 inclusive of VAT.
103. In addition to this there was counsels' fees of £1,750 plus travelling expenses of £200 and £350 for VAT claimed on solicitors and counsel's fees giving a total of £4,389.20 together with £1,157.50 for the work done on documents including the statement of case, witness statement, respondent bundle and schedule of costs.
104. The Tribunal is generally a no costs jurisdiction however should one of the parties make an application under Rule 13 of Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013 then they must do so within 28 days after the date on which the Tribunal sends this Decision. The Tribunal will then issue further Directions in respect of the matter.

### **Appeal Provisions**

104. If either party is dissatisfied with this decision, they may apply to this Tribunal for permission to appeal to the Upper tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to the parties (rule 52 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013).
105. 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.
106. 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.

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

**Nicholas Wint FRICS**

**First-tier Tribunal (Property Chamber) (Residential Property)**