

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	:	BIR/31UC/HPV/2025/0001
Property	:	**7 The Coneries, Loughborough, Leicestershire, LE11 1DZ**
Applicant	:	Loughborough LE11 Ltd
Respondent	:	Charnwood Borough Council
Type of application	:	Appeal against an Emergency Prohibition Order under s45(1) Housing Act 2004
Tribunal members	:	Judge C Payne (Chair) Mr R Chumley Roberts MCIEH, J.P.
Date and place of Inspection and Hearing	:	Inspection of Property 21st May2026 Hearing 22nd May 2026
Date of decision	:	30 October 2026

DECISION

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Summary

1. The Tribunal orders that the Emergency Prohibition Order relating to 7 The Coneries, Loughborough, Leicestershire, LE11 1DZ be revoked with effect from the date it was made, being 10 October 2025, and that any associated demand for payment of a charge that may have been issued relating to the same be quashed.

2. The Tribunal orders, under Rule 13(2) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013, that Charnwood Borough Council reimburse Loughborough LE11 Ltd the whole of the Tribunal application fee and the hearing fee, being a total sum of £341.

Background

3. The Applicant is the owner of the property at 7 The Coneries, Loughborough, Leicestershire, LE11 1DZ ("the Property").

4. The Property is a block of 40 residential flats, with a car park on the ground floor.

5. On 10 October 2025, an Emergency Prohibition Order of the same date was served in relation to the Property ("the EPO") by the Respondent local authority.

6. The Applicant appeals against the EPO under section 45 of the Housing Act 2004 ("the Act") to this Tribunal by an application made on 13 October 2025. Directions were given on 15 December 2025, by Regional Judge Jackson.

7. The Respondent was ordered to prepare and serve a digital Statement of Case setting out all matters of fact and law relied upon in relation to the Prohibition Order and exhibiting all relevant documents and send it to the Tribunal by 8th January 2026. This was not done.

8. The Applicant was ordered to prepare a digital Statement of Case setting out all matters of fact and law relied upon in the appeal against the Prohibition Order and exhibiting all relevant documents by 29 January 2026. A statement prepared by Mrs Odunaiya, the Applicant Company's Director, on behalf of the Applicant was provided on 28 January 2026.

9. The Respondent was ordered to provide a Reply by no later than 12 February 2026. An undated and unsigned statement was submitted by Ms Lesley Bassford on behalf of the Respondent on 3 March 2026.

10. A supplementary Statement was submitted by Mrs Odunaiya on 11 March 2026.

11. Under Rule 8 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the Tribunal determined to allow the statements submitted by both parties into evidence. The Tribunal also permitted both parties to submit supplemental bundles of documents following the inspection.

12. The matter was listed for a final hearing on 22 May 2026. The Tribunal panel carried out an inspection of the Property, with both Mrs Odunaiya (Director) and Mr Odunaiya (Mrs Odunaiya's husband) present on behalf of the Applicant and Helen Foster (Housing Manager), Ms Lesley Bassford (Environmental Health Officer), Mr Adrian Gladstone (Surveyor) and Mr Trevor Berryman (Counsel) present on behalf of the Respondent on 21 May 2026 prior to the hearing.

The Law

13. The Respondent local authority is responsible for the operation of a regime designed to evaluate potential risks to health and safety from deficiencies in dwellings, and to enforce compliance where mandated or appropriate. That scheme is called the Housing Health and Safety Rating System (HHSRS), which was established under the Housing Act 2004 ("the Act"), supplemented by the Housing Health and Safety Rating System (England) Regulations 2005 ("the Regulations").

14. The scheme set out in the Act is as follows:

    a. Section 1 (1) provides for a system of assessing the condition of residential dwellings and for that system to be used in the enforcement of housing standards in relation to such premises. The system (which is the HHSRS system) operates by reference to the existence of Category 1 or Category 2 hazards on residential premises.

    b. Section 2 (1) defines a Category 1 hazard as one which achieves a numerical score under a prescribed method of calculating the seriousness of a hazard. A Category 2 hazard is one that does not score highly enough to be a Category 1 hazard.

    c. "Hazard" means any risk of harm to the health or safety of an actual or potential occupier of a dwelling which arises from a deficiency in the dwelling.

15. The HHSRS requires an assessment of the likelihood that a hazard, resulting from a deficiency in the premises, would cause harm to any occupier, within a 12 month period, from the date of that assessment. The HHSRS operating guidance advises of the "*most vulnerable age group*" that would be affected by each of the 29 hazard (profiles) set out within it. However, the age and characteristics of the actual occupiers are not relevant for the actual assessment.

16. Section 4 of the Act provides the procedure to be followed by a local authority before commencing any enforcement action. If the local authority becomes aware that it would be appropriate for any property to be inspected with a view to determining whether a hazard exists, it must carry out an inspection for that purpose.

17. Section 5(1) of the Act provides that:

"If a local authority considers that a category 1 hazard exists on any residential premises, they have a duty to take the appropriate enforcement action in relation to the hazard".

18. Section 5(2) says that the appropriate enforcement action means whichever of the following courses of action is indicated. Those courses of action are:

a. Improvement notice
b. Prohibition order
c. Hazard awareness notice
d. Emergency remedial action
e. Emergency prohibition order
f. Demolition order
g. Declaration of a clearance area

19. Section 5(4) says that if two or more courses of action within subsection (2) are available to the authority in respect of the hazard, they must take the course of action which they consider to be the most appropriate of those available. Section 5(3) says that if only one course of action within section 5(2) is available to the authority in relation to the hazard, they must take that course of action.

20. By section 7 the authority has a power (but not a duty) to take action in respect of category 2 hazards. The enforcement options for a category 2 include the power to issue an improvement notice, make a prohibition order, or issue a hazard awareness notice.

21. Section 43 provides a power to the local authority to make an emergency prohibition order, of the kind issued in this case. It is useful to set out the statutory provision insofar as relevant:

" 43 Emergency prohibition orders
(1) If—
(a) the local housing authority are satisfied that a category 1 hazard exists on any residential premises, and
(b) they are further satisfied that the hazard involves *an imminent risk* of *serious harm* to the health or safety *of any of the occupiers of those or any other residential premises*, and
(c) no management order is in force under Chapter 1 or 2 of Part 4 in relation to the premises mentioned in paragraph (a),
making an emergency prohibition order under this section in respect of the hazard is a course of action available to the authority in relation to the hazard for the purposes of section 5 (category 1 hazards: general duty to take

enforcement action).
(2) An emergency prohibition order under this section is an order imposing, with immediate effect, such prohibition or prohibitions on the use of any premises as are specified in the order in accordance with subsection (3) and section 44.
...
(5) The following provisions also apply to an emergency prohibition order as they apply to a prohibition order (or to a prohibition order which has become operative, as the case may be)—
(a) section 25 (revocation and variation);
(b) sections 32 to 36 (enforcement);
(c) sections 37 to 39 (supplementary provisions); and
(d) Part 2 of Schedule 2 (notices relating to revocation or variation);
(e) Part 3 of that Schedule (appeals) so far as it relates to any decision to vary, or to refuse to revoke or vary, a prohibition order; and
(f) sections 584A and 584B of the Housing Act 1985 (c. 68) (payment, and repayment, of compensation).
(6) For the purposes of the operation of any provision relating to prohibition orders as it applies in connection with emergency prohibition orders by virtue of this section or section 45, any reference in that provision to the specified premises is to be read as a reference to the premises specified, in accordance with section 44(2)(c), as the premises in relation to which prohibitions are imposed by the order."

(*our emphasis added*)

22. The jurisdictional gateway to the issue of an emergency prohibition order is therefore the requirement for an "*imminent risk*" of "*serious harm*" to "*any of the occupiers of those or any other residential premises*". In a departure therefore to the HHSRS approach of deeming occupier ages to be irrelevant when determining the "*hazard score*", when considering the making of an emergency prohibition order, the local authority must have regard to the risk to the actual occupiers, when assessing the imminency of any risk.

23. There is a power in section 20 of the Act, that allows a local authority to make a prohibition order (i.e. as distinct from an emergency prohibition order) where a category 1 hazard exists on residential premises and no management order in force in respect of the property. There is no requirement, as with an emergency prohibition order, for there to be an "*imminent risk*" of "*serious harm*" to "*any of the occupiers of those or any other residential premises*".

24. Section 9 of the Act provides that the UK Government may publish guidance to local authorities about exercising their functions under the Act. The local authority must have regard to that guidance. Two relevant sets of guidance have been issued the first called Operating Guidance and the second called Enforcement Guidance, both dated February 2006 (for convenience, they are both referred to together in this decision as "the Guidance").

25. If the premises are an HMO or a dwelling, the local authority may prohibit the use of the dwelling or the HMO. Section 21 allows a Prohibition Order to be made in respect of category 2 hazards.

26. There are various provisions as to what must be contained within an emergency prohibition order (section 44) and a prohibition order (section 22).

27. Section 45(2) contains a right to appeal to the First Tier Tribunal in respect of any emergency prohibition order made under section 43. That appeal must be made within 28 days beginning with the date specified in the prohibition order as to the date on which the order was made. This application was made within that time period.

28. Section 45(5) states that the appeal to a Tribunal is to be dealt with by way of - re-hearing, but may be determined having regard to matters of which the authority were unaware. The Tribunal may, by section 45(6)(b), confirm or vary the emergency prohibition order or make an order revoking it as from a date specified in that order. There is no power for the Tribunal to substitute an emergency prohibition order with some other form of enforcement action, for example, a prohibition order or an improvement notice.

29. Turning to the method of determining whether a category 1 or category 2 hazard exists (i.e., the operation of the HHSRS), and the overall hazard score, this is set out in the Regulations and the Guidance. The procedure is broadly summarised as follows:

    a. There are 29 specific hazards that are identified in Schedule 1 of the Regulations and these are known as "*prescribed hazards*".

    b. The first step is for an assessor to establish, in relation to a prescribed hazard, the likelihood, during the period of 12 months beginning with the date of the assessment, of a relevant occupier suffering harm as a result of that hazard. Guidance under s9 of the Act gives national average likelihoods for each prescribed hazard but the assessor makes an individual assessment.
    c. The assessor's assessment of the likelihood is converted into one of representative scale points on a range of likelihoods, 1:1 (i.e., certain) to 1:5600 (i.e., very unlikely). The scale points are set out in paragraph 6 of the Regulations.

    d. The second judgement for the assessor is the possible harm outcomes, that could affect a relevant person as a result of the hazard actually occurring. This is done by reference to four classes of potential health outcomes or "harms". Class I harm is such extreme harm as is reasonably foreseeable as a result of the hazard in question, including death and 80% burn injuries. Class II harm is severe harm including, for example, cardio-respiratory disease. Class III harm is serious harm including, for example, serious burns to hands. Class IV harm is moderate harm, such as serious coughs or colds. Taken into account in the assessment are the characteristics of and conditions at the relevant dwelling. Each of the four classes of harm are attributed a representational scale point which are the harm outcome scores.

e. The assessor then uses the two judgements made (the representational scale points for the likelihood of harm for the prescribed hazard and the four harm classes) to produce a hazard score and therefore a hazard rating .

This Appeal

30. The EPO lists 7 categories of hazards as being present at the Property but at the hearing the Respondent advised that only two of them were relevant to the Emergency Prohibition Order. These were the hazards of “Fire” and “Structural Collapse and Falling Elements”.

31. The EPO also provided a Schedule of Works that the Respondent felt were required as follows:
    1. *Investigate the cause of water penetration to the internal structure of the building and repair as necessary.*
    2. *Employ a competent person to replace all water damaged plasterwork in line with the required fire resistance for that area and in line with current Building Regulations, installed in accordance with relevant product certification. Provide all specification and certification to this office.*
    3. *Ensure all external walls are insulated in line with current Building Regulations, installed in accordance with relevant product certification.*
    4. *Employ a competent person to provide visual peep holes in the individual flat doors.*
    5. *Overhaul, repair or replace ALL internal fire doors.*
    6. *Provide fire certification for ALL internal flat doors to this office.*
    7. *Ensure the scaffolding is secure against unauthorised entry.*
    8. *Re-attach the internal soil pipe in the rear carpark area, fit with fire collars as necessary where the pipes pass through fire protected areas. On completion ensure that the waste pipe is watertight and free flowing.*
    9. *Re-instate the external wall compartmentation and missing cavity barriers in line with the required fire resistance for that area and in line with current Building Regulations, installed in accordance with relevant product certification. Provide all specification and certification to this office.*
    10. *Employ a competent person to test the fire alarm system to the building and ensure it is fully functioning. Provide all certification to this office.*
    11. *Re-instate the fire door between the storeroom and lobby.*
    12. *Ensure all voids, service pipes, holes, etc are repaired to ensure adequate compartmentalisation to prevent the uncontrolled spread of fire. All works should be in line with the required fire resistance for that area and in line with current Building Regulations, installed in*

accordance with relevant product certification. Provide all specification and certification to this office.

13. *Employ a suitably qualified Structural Engineer to investigate the integrity of the external wall, steel structure and brick cladding. Provide the full report to this office.*
14. *Ensure the gas meters are accessible at all times to any occupiers of the property.*
15. *Employ a competent person to move the fire board from in front of the meter to allow access but to maintain the compartmentalisation.*

32. The Applicant's grounds of challenge to the EPO, were summarised in the statement of Mrs Odunaiya dated 28 January 2026 as follows:

    a. No Category 1 hazard existed;
    b. There is no imminent risk of serious harm;
    c. Many alleged deficiencies do not exist, are speculative, or are outside the scope of housing enforcement;
    d. Fire-related matters duplicate an existing Prohibition Notice issued by the Fire and Rescue Authority, which they have not felt the need to enforce; and
    e. All issues could have been dealt with by way of an Improvement Notice, making an EPO disproportionate.

33. The undated statement of the Respondent's Environmental Health Officer, Ms Lesley Bassford, provided to the Tribunal in response stated that the Prohibition Order served on 23 July 2025 by the local Fire Authority identified the following issues as Category 1 Hazards posing an imminent risk of serious harm (a copy of the PO was not provided) and that they had not been addressed:

    a. Fire Separation and Compartmentation
    b. Compartmentation will not support the existing fire strategy of 'Stay Put'
    c. External wall system may promote fire spread
    d. Protection of the single means of escape is not adequate
    e. Smoke ventilation shaft will not function as designed, and further restrict evacuation of relevant persons

34. In a further statement dated 11 March 2026 Mrs Odunaiya provided a copy of the PO noting that it identified the following hazards, which are different to those listed by Ms Bassford in her statement:

    a. Inadequate compartmentation within the external wall having been stripped and missing cavity barriers
    b. Lack of compartmentation between the car park and the flats above and to the structure of the building which is exposed.
    c. Inadequate means of raising the alarm due to faults on the fire system

35. Mrs Odunaiya in her supplemental statement of 11 March 2026 also stated

that all faults with the fire alarm system have been addressed and it is fully operational. She noted that the other items related to the ongoing external wall remediation works. She stated that the Applicant has informed the residents that a PO issued by the Local Fire Authority was in place and that the premises should not be occupied. However, the Applicant does not believe that there is currently any hazard at the premises that poses an imminent risk of serious harm.

The Inspection

36. On 21 May 2026 the Tribunal inspected the common parts of the Property and the internal areas of flats 2 and 8. During the Inspection the Respondents directed the Tribunal's attention to the hazards they had identified. It was accepted that some of those hazards listed had already been addressed as part of the ongoing improvement works.

37. During the inspection, the Applicants asked the Tribunal to note that they had notified all occupiers of the PO issued by the Local Fire Authority and the EPO, both of which were clearly posted on the wall of the corridor on each floor of the Property.

38. The Respondents invited the Tribunal to note that there were still some third parties occupying flats in the Property. The Applicant submitted that they had given notice to all of their short term tenants and ensured they had vacated. However, a number of flats were held by occupiers under long Leaseholds and those tenants could not be removed or prevented from accessing their flats without a Court Order. The Applicant stated they had sought legal advice and concluded it was not appropriate to seek orders to terminate long Leasehold interests, particularly where the issues raised by the Respondent and the Local Fire Authority relate to ongoing improvement works at the premises which were nearly complete.

The Hearing

39. The hearing on 22 May 2026 was held in person and was attended by Mrs Odunaiya (Director) and Mr Odunaiya (Mrs Odunaiya's husband) on behalf of the Applicant and Helen Foster (Housing Manager) and Mr Trevor Berryman (Counsel) on behalf of the Respondent.

40. Ms Lesley Bassford (Environmental Health Officer), who had undertaken the assessment, prepared and issued the EPO and provided the witness evidence to the Tribunal on behalf of the Respondent was not available to assist the Tribunal at the hearing. Despite the hearing being listed in line with the availability provided by the Respondents, the Tribunal were advised that Ms Bassford was unavailable as she did not work on a Friday.

41. The Respondents requested that the hearing be adjourned to a later date to allow Ms Bassford to attend and the Respondents to adduce more evidence. The Tribunal notes that the parties had been given ample opportunity to make submissions, including an opportunity to provide supplemental

bundles after the inspection. The hearing had been listed in line with the availability of the parties and they were given good notice to attend. On that basis, the Tribunal declined the Respondent's request to adjourn the hearing. The Tribunal proceeded to determine the cases on the basis of the evidence before it, the submissions of the parties' representatives and the inspection of the Property.

Discussion

42. There is no management order in force in relation to the Property. The Tribunal must, therefore, determine whether any category 1 hazards exist at the Property and, if there are, determine whether the category 1 hazards that exist, whether of themselves or taken together, present an "*imminent risk*" of "*serious harm*", such that would open the jurisdictional gateway to an emergency prohibition order. If that is found to be the case, then the question of whether such an order is the most appropriate form of enforcement action to take needs to be considered.

43. In the case of *Bolton Metropolitan Borough Council -v- Patel [2010] UKUT 334* the Upper Tribunal noted that the requirement of imminency of serious harm sets a high threshold for the availability of emergency relief. The existence of such a risk opens up a draconian form of remedy, which may prevent the use of property completely by tenants (as in this case).

44. Although *Bolton* was not cited to us in argument, it represents the best legal authority from which we can find support when determining the meaning of "*imminent risk of serious harm*". We have in mind the Shorter Oxford English Dictionary, 6th Edition, defines imminent as:

> *"Of an event, esp. danger or disaster; impending, soon to happen."*

45. We must apply the ordinary meaning of the legislation, essentially, seeking to identify by reference to the specific hazards in this case whether there is a risk of impending danger or disaster, such that it may soon happen. In so doing, we seek to give a common sense meaning to the words of the statute when assessing the imminency of any risk of serious harm.

Category 1 hazards that present an "imminent risk" of "serious harm"

46. The Respondent undertook the formal HHSRS assessment on the 9th October 2025, the day before the EPO was made. At this assessment they determined that 5 Category 1 hazards were present at the property, but at the hearing they advised that only two of them were relevant to the Emergency Prohibition Order. These were the hazards of "Fire" and "Structural Collapse and Falling Elements".

47. The Tribunal reviewed the Hazard Scoring provided by the Respondent for these two hazards and discussed these with the Respondent's witness (not the officer who undertook the assessment) during the hearing.

48. The hazard scores for the (Hazard Profile 24) "Fire" were calculated by the Respondent as 52914, which provides a "Band A" hazard and for (Hazard Profile 29) "Structural Collapse and Falling Elements" was calculated as 1411 which provides a "Band C" hazard.

49. In essence the Hazard Score for each hazard is produced by arithmetical calculation of a figure for the Likelihood of an event occurring (within the next 12 month period) against the possible Health Outcomes (of which there are 4 classes, numbered 1 to 4).

50. National average figures are given for both "Likelihood" and "Health Outcomes" in the Housing Health and Safety Rating System Operating Guidance produced by the Office of the Deputy Prime Minister in February 2006. As this is a statistically based system, assessors using the guidance have to make judgements on the likelihood of the event occurring and the potential health outcomes, but must use "Representational Scale Points" (RSP) set out in the guidance, to calculate the hazard score.

Hazard Profile 24 – Fire

51. The evidence submitted by the Applicant included that the welding contractors used a "hot works" permit system (a common/normal health and safety at work system) to control the risk of fire at the property, when it was a construction site. They also advised that they had previously had a " waking watch" system when the building was occupied by their tenants.

52. It is the Tribunal's view that this hazard had been overscored. The national average figure for "Likelihood" for a building used as flats built post 1979 is 1 in 2157. When translated into the representation scale point, this means a 1 in 1800 chance of the fire event occasioning harm occurring. The Respondent's assessment is 1 in 1 i.e. that the event must occur within the 12 month period. When viewing the HHSRS scoring sheet in the Operating Guidance this is a 13 position shift away from the average figures, producing a Hazard Score of 52914 when the average Hazard Score for such a property is 17.

53. There is also an error in the Respondent's assessor's use of the scoring system in the operating guidance, in respect of Harm Outcomes. The cumulative value of the classes 1, 2 and 3 of harms comes to 26.1 meaning the value for class 4 would be 73.9 and not 46.4

54. In the Tribunal's opinion a more realistic Hazard Score for this property is likely to have been 2955 giving a category 1 hazard at Band B.

55. The Tribunal also noted the following in respect of the Schedule to the EPO:

    a. Items 5,6 & 11 – The fire doors were noted to be in situ at the time of the inspection and copies of the certificates were provided to the Tribunal.
    b. Item 8 – The collars the Tribunal's attention was taken to related to a water pipe in the car park at the point it passes through a temporary wall, which has been put up in the car park for the duration of the works as a safety precaution. The Tribunal noted this was not a fire hazard. In fact, the temporary wall increased protection while works were carried out.
    c. Item 9 – These works appear to have been completed, and the Applicant is waiting for Building Regulations sign off. The works have been undertaken by a professional contractor and when independently inspected were confirmed to be in line with the plans and have no contraventions.
    d. Item 10 – The fire alarm is showing no faults and there has been no issue with errors since February 2026.
    e. Item 12 – The compartmentalisation point was not particularised in the EPO. On Inspection, the Tribunal were directed to a hole that has now been filled in the Car park. The Tribunal were advised the wall had been opened to allow improvement works to be carried out to it and then reinstated.
    f. Item 15 – The board described has been removed and was only in place as part of a temporary safety measure while works were being undertaken.

56. Taking all of the evidence into account, the Tribunal could not identify any category 1 hazards at the Property, whether of themselves or taken together, that would present an "*imminent risk*" of "*serious harm*". The Tribunal noted that the local Fire Authority had not felt it necessary to take steps to enforce the PO they had issued.

Hazard Profile 29 – Structural Collapse and Falling Elements

57. The evidence submitted by the Applicant was that the renewal of the cladding to the building has been completed and they were awaiting the Building Control Certificate, which will come when the whole project is complete. During the inspection it was noted that the scaffolding at the rear/side of the building was being removed, apparently after works. The Respondent advised that the reason for the cladding renewal was that parts of the facing brick at the front of the property had fallen.

58. It is the Tribunal's view that the Respondent's justification for the Likelihood score for this hazard being 1 in 6 (from a national average figure of 1 in 5600 for such a building) is problematic to accept since it is based firstly on their

assessor's opinion that the replacement cladding has been incorrectly fitted, and secondly that the decking for an external balcony to two flats continues through the external wall and is contiguous with the internal flooring, of those flats.

59. The Applicant provided evidence that the external cladding works had been inspected by Building Control officers and a "positive" report has been provided to Homes England, regarding progress. From inspection the Tribunal noted that it was highly unlikely that the remaining parts of the decking to the balcony would be contiguous with the flooring in the adjacent flats. These internal floors were dry.

60. There are also errors in the Respondent's assessor's use of the scoring system in the operating guidance, in respect of Harm Outcomes. The RSP for the class 1 harm should be 1.0 and not 0.5 and this would produce a higher Hazard Score with a likelihood figure of 1 in 6, than they assessed. In addition, the cumulative value of the classes 1, 2 and 3 of harms on their figures comes to 10.5 meaning their value for class 4 would be 89.5 not 46.4. In reality the class 4 figure should be 89.

61. In the Tribunal's opinion a more realistic Hazard Score for this property is likely to have been 43.4 giving a category 2 hazard at Band H. The Tribunal notes that the average hazard score for such an aged property is 1 (Band J).

62. The Tribunal also noted that this relates to improvement works in progress at the Property being undertaken specifically to mitigate this risk, which were nearing completion at the time of the inspection. As such, the Tribunal found no evidence of any category 1 hazards relating to structural collapse or falling elements that, whether of themselves or taken together, would present an "*imminent risk*" of "*serious harm*".

Appropriate Form of Enforcement Action

63. The Respondent made representations to the Tribunal that the reason the EPO had been issued was that it was felt necessary to escalate the matter as the Local Fire Authority had chosen not to enforce their PO. The duty of the local authority when encountering a category 1 hazard in a residential property is to take appropriate action. In this case, the Tribunal determined that, taking all the circumstances into account, it may have been appropriate for the Respondent to take some action, but it was not appropriate to issue an EPO.

Conclusions

64. Considering matters afresh, and for the reasons set out above in respect of both the Fire hazard and the Structural Collapse and Falling Elements hazard, we

do not consider that we would have made the EPO when the Respondent did. Given the absence of any category 1 hazard presenting an imminent risk of serious harm, we cannot sustain the EPO. As such, we revoke the EPO with immediate effect.

65. We do not consider that we have the power to substitute an Improvement Notice or Prohibition Order in place of the EPO, given the wording of section 45(6)(b), which refers to variations to the emergency prohibition order.

66. Further, it follows in our view that costs of making the EPO, which we would not have made given the absence of any imminent risk of serious harm, cannot be recovered against the Applicant. As such, to the extent such costs have been paid by the Applicant to the Respondent already, they must be repaid by the Respondent to the Applicant, and if not already paid, they need not be paid.

Order under Rule 13

67. The Tribunal can, on its own initiative, under Rule 13(2) "make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party...". In this matter, the Applicant had paid an application fee of £114 and a hearing fee of £227.x

68. Having found that the Respondent had made some serious errors in their assessment of the hazards, and the flawed approach applied when determining appropriate enforcement action, and as the Tribunal has found that the Respondent should not have made an EPO, the Tribunal finds it appropriate to make an order under Rule 13(2) requiring the Respondent to reimburse to the Applicant both the application fee and the hearing fee

Judge C Payne
Chair
First-tier Tribunal (Property Chamber)

Appeal

Any appeal against this decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal the party appealing must apply, in writing, to this Tribunal for permission to appeal within 28 days of the date of issue of this decision (or, if applicable, within 28 days of any decision on a review or application to set aside) identifying the decision to which the appeal relates, stating the grounds on which that party intends to rely in the appeal, and stating the result sought by the party making the application.