FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00BH/HPO/2022/0006.**
Property	**:**	**Flats D & E, 331 Lea Bridge Road, London E10 7LA.**
Applicant	**:**	**Owais Khan.**
Representative	**:**	**Shahlab Baig; Town & County Valuers and Surveyors Limited**
Respondent	**:**	**London Borough of Waltham Forest**
Representative	**:**	**Mr Alex Williams of Counsel**
Interested person	**:**	**-**
Type of application	**:**	**Appeal against prohibition orders** Sections 20 and/or 21 and paragraph 7(1) of Schedule 2 to the Housing Act 2004
Tribunal members	**:**	**Judge Professor Robert Abbey** **Mr Steve Wheeler MCIEH, CEnvH (Professional Member)**
Venue	**:**	**16th February 2023 at 10 Alfred Place, London WC1E 7LR**
Date of decision	**:**	**20 February 2023**

DECISION

Decision of the tribunal

(1) The prohibition orders made by the London Borough of Waltham Forest on 18 July 2022 in respect of **Flats D & E, 331 Lea Bridge**

Road, London E10 7LA are confirmed. The appeals by Mr Owais Khan the applicant are therefore dismissed.

Reasons for the tribunal's decision

Introduction

1. The tribunal did not inspect the property as it considered the documentation and information before it in the trial bundles enabled the tribunal to proceed with this determination and also because of the safety concerns and restrictions arising out of the Covid-19 pandemic.

2. The applicant appealed against the making of two prohibition orders under sections 20 and/or 21 and paragraph 7(1) of Schedule 2 to the Housing Act 2004 by the London Borough of Waltham Forest, in respect of a property known as **Flats D & E, 331 Lea Bridge Road, London E10 7LA.** In accordance with paragraph 11(2) of Schedule 2 to the Housing Act 2004, the appeal is to be by way of a re-hearing.

3. Directions were issued on 28 October 2022 when it was stated that the basis of the appeal is that the applicant believes the best course of action would have been to serve improvement notices under S.11 or S.12 of the Act. The applicant says that drawings have been prepared to an extension and alterations to the property that will improve the floor areas and living environment of the tenants. The applicant believes the prohibition order should be quashed or at the very least suspended.

4. At the hearing, the applicant did not appear but was represented by Mr Baig; the respondent was represented by Mr Williams of Counsel. The applicant not being in attendance he was not available for cross examination and therefore the Tribunal could only give such weight to his evidence as was appropriate given his non-attendance. Ms Lobsang Palmo an Environmental Health Officer working for the respondent gave evidence for the local authority and was cross examined by the applicant's representative.

5. Relevant law and in particular sections 20,21 and 22 of the Housing Act 2004 can be found in the appendix to this decision and rights of appeal in regard to this decision on the appeal made by the applicant are in an annex to this decision.

Background

6. The property is a mid-terrace house, converted into 5 self-contained bedsit flats (Flats A to E). Flats D and E, the subject of these appeals, benefit from selective licenses under the Council's Selective licensing Scheme. The freehold title is owned by the applicant.

7. Local authorities have powers, under the Housing Act 2004, to calculate the seriousness of certain hazards and take enforcement action against building owners or landlords based on their assessment. It is the exercise of this power that has caused the local authority to issue the prohibition orders and to cause the appeals by the applicant.

The law

8. Part I of the Housing Act 2004 (the Act) sets out a regime for the assessment of housing conditions and a range of powers for local authorities to enforce housing standards. Housing conditions are assessed by the application of the Housing Health and Safety Rating System (HHSRS). This includes Category 1 and Category 2 hazards. A hazard is any risk of harm to the health or safety of an actual or potential occupier of accommodation that arises from a deficiency in the dwelling, building or land in the vicinity. Health includes mental health.

9. In January 2022 the Council carried out HHSRS surveys in respect of both flats. Among other things the Flat D HHSRS survey identified the lack of adequate lighting as a Category 2 hazard. The survey report stated that the flat "has barely adequate light with no outlook". Photographs were produced to the Tribunal. The Flat E HHSRS survey identified excess cold and the related hazard of mould and damp as a Category 1 hazard Following service of the prohibition orders, the applicant lodged this appeal. Under Section 20 and 21 of the Act the Council required the applicant to carry out the works to remove or reduce the hazard/s listed in the orders.

10. In relation to Flat D the prohibition order described the main deficiencies as a "Lack of reasonable view and outlook through the living room window which looks onto a brick wall", and "inadequate borrowed light to the bedsit" In order to remedy the deficiency the order stated that the "rear extension would need to be demolished and the layout to the flat re-arranged to re-site the bathroom so that outlook and natural light can be provided to the living space from the installation of an adequately sized window to the back wall" (3). The notice further stated the "work is considerable and may require planning permission".

11. The accompanying reasons explained why remedial action would not be appropriate:

12. "The building was developed without planning permission and building control approval. Extensive remedial works would be necessary to achieve an adequate standard of accommodation which would include the removal of a back addition extension and re-arrangement of the internal rooms of the flat. Therefore, the making of

an Improvement Notice or Suspended Improvement Notice is not considered appropriate in this case."

13. In relation to Flat E the prohibition order described the main deficiencies, among other things, as the "poor construction and lack of any thermal insulation which means that the dwelling cannot maintain a healthy indoor temperature"; and "inadequate insulation to the walls, ceiling, and the floor". The order also referenced the "lack of any fixed and controllable heating" and stated that the "walls ceilings and floor… are severely affected by damp and mould growth". In order to remedy the deficiency the order stated that it "is not reasonable for improvement works to be carried out because extensive works would be necessary to reduce the hazards to a satisfactory level which would include insulation works".

14. Again, and in similar terms to the prohibition order for Flat D, the accompanying reasons explained why remedial action would not be appropriate:

15. "The building was developed without planning permission and building control consent. Extensive remedial works would be necessary to achieve an adequate standard of accommodation, however, the extension does not appear to have been built on solid foundations. Therefore, the making of an Improvement Notice or Suspended Improvement Notice is not considered appropriate in this case."

16. 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 calculations for mathematical accuracy. Rather, the Tribunal must decide for itself – in respect of each of the flats 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. The Tribunal should deploy its own expertise to take "a broad, nuanced approach to risk", and thereby make "a common-sense assessment". In making a common-sense judgment in relation to appeals, tribunals must still consider the seriousness of any hazard.

The grounds of appeal

17. The appellant's case is that he believes the best course of action would have been to serve improvement notices under S.11 or S.12 of the Act. The applicant says that drawings have been prepared to an extension and alterations to the property that will improve the floor

areas and living environment of the tenants. The applicant believes the prohibition order should be quashed or at the very least suspended because a planning application is with the local authority and has been with them for some time.

The tribunal's reasons for rejecting the appeal

18. The property is in a poor state and this has clearly been the case for some time. It is apparent that there are significant hazards/issues with regard to the property as listed in the prohibition orders that included a lack of reasonable view and outlook through the living room window which looks out onto a brick wall for flat D. For Flat E the hazards/issues included damp and mould poor construction and lack of thermal insulation. These amounted to significant and consequently hazards that would require significant works to remedy and meant that the premises could not be appropriate living accommodation for tenants.

19. The inspection by the respondent revealed a catalogue of serious hazards that had the potential to cause harm to any occupants. The HHSRS Enforcement Guidance issued by the Secretary of State in February 2006 states that a prohibition order might be appropriate:

> *"A prohibition order under section 20 or 21 of the Act is a possible response to a category 1 or a category 2 hazard. It may prohibit the use of part or all of the premises for some or all purposes, or occupation by particular numbers or descriptions of people.*
>
> *An Order might be appropriate:*
>
> *• where the conditions present a serious threat to health or safety but where remedial action is considered unreasonable or impractical for cost or other reasons. These other reasons may include cases where work cannot be carried out to remedy a serious hazard with the tenant in residence. The landlord may not be able to rehouse the tenant, though the authority may consider offering temporary or permanent alternative accommodation to the tenant to assist in progressing remedial works;*
>
> *• to specify the maximum number of persons who occupy a dwelling where it is too small for the household's needs, in particular the number of bedrooms (action to deal with future occupation could be taken through the use of a suspended order); • to control the number of persons who occupy a dwelling where there are insufficient facilities (e.g. personal washing facilities, sanitary facilities, or food preparation or*

cooking facilities) for the numbers in occupation (a suspended order could deal with future occupation);

• to prohibit the use of a dwelling by a specified group (until such time as improvements have been carried out), where a dwelling is hazardous to some people, but relatively safe for occupation by others. The specified group relates to the class of people for whom the risk arising from the hazard is greater than for any other group, for example, elderly people or those with young children;

• in an HMO, to prohibit the use of specified dwelling units or of common parts"

20. In the light of the above guidance from the Secretary of State it was clear to the Tribunal that prohibition orders would be the appropriate response to the poor conditions at the property that were apparent to the respondent.

21. The Appellant's only ground of appeal against the prohibition orders is that the best course of action would have been to serve an improvement notice under ss 11 or 12 of the Housing Act 2004. In relation to both flats the Appellant seeks to rely on his recent planning application, which he says "will improve the floor areas and living environment of the tenants".

22. The Tribunal was not persuaded by the ground for the appeal. As Counsel for the respondent observed, "The Appellant's planning application confirms rather than challenges the Council's position that neither flat is usable in its current form. The application proposes to redevelop both Flats D and E extensively. Comparing the existing and proposed ground floor plans both flats would be significantly extended into 1-bedroom flats rather than bedsit rooms. The new Flat D would use almost all of the floorspace of the existing Flat E. By the Appellant's own admission it appears that neither flat is fit for use in its present form.

23. The Appellant's proposals also depend on the grant of planning permission, which in turn depends on the operation of a separate regime outside of the HA 2004. Planning permission has not yet been granted and is by no means guaranteed. Moreover, and for obvious reasons, the granting of planning permission does not entail the works being carried out. Many planning permissions lapse, without having been implemented.

24. The planning application does not address the remaining issues, chiefly the matter of thermal insulation in Flat E. There is nothing in the Appellant's evidence to suggest that the planning

application would address anything other than the issue of natural light in Flat D."

25. The problem that the applicant has is that even though a planning application has been lodged, the hazards/defects in the property remain in place and have not been addressed or remedied by the applicant. Unless and until they are there is little or no reason for the Tribunal to interfere with the prohibition orders. It is the case that once the hazards are gone the local authority is under a statutory duty to remove the prohibition orders.

26. In all the circumstances, it is not considered that the decision to serve the prohibition orders was disproportionate. Similarly, a suspended prohibition order in these circumstances could not be justified either and the same is true for possible improvement notices. The appeals are therefore dismissed.

Name: Judge Professor Robert Abbey **Date:** 20 February 2023

Appendix

Housing Act 2004

20Prohibition orders relating to category 1 hazards: duty of authority to make order

(1)If—
(a)the local housing authority are satisfied that a category 1 hazard exists on any residential premises, and
(b)no management order is in force in relation to the premises under Chapter 1 or 2 of Part 4, making a 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)A prohibition order under this section is an order imposing such prohibition or prohibitions on the use of any premises as is or are specified in the order in accordance with subsections (3) and (4) and section 22.
(3)The order may prohibit use of the following premises—
(a)if the residential premises on which the hazard exists are a dwelling or HMO which is not a flat, it may prohibit use of the dwelling or HMO;
(b)if those premises are one or more flats, it may prohibit use of the building containing the flat or flats (or any part of the building) or any external common parts;
(c)if those premises are the common parts of a building containing one or more flats, it may prohibit use of the building (or any part of the building) or any external common parts.
Paragraphs (b) and (c) are subject to subsection (4).
(4)The notice may not, by virtue of subsection (3)(b) or (c), prohibit use of any part of the building or its external common parts that is not included in any residential premises on which the hazard exists, unless the authority are satisfied—
(a)that the deficiency from which the hazard arises is situated there, and
(b)that it is necessary for such use to be prohibited in order to protect the health or safety of any actual or potential occupiers of one or more of the flats.
(5)A prohibition order under this section may relate to more than one category 1 hazard on the same premises or in the same building containing one or more flats.
(6)The operation of a prohibition order under this section may be suspended in accordance with section 23.
21Prohibition orders relating to category 2 hazards: power of authority to make order
(1)If—
(a)the local housing authority are satisfied that a category 2 hazard exists on any residential premises, and
(b)no management order is in force in relation to the premises under Chapter 1 or 2 of Part 4, the authority may make a prohibition order under this section in respect of the hazard.
(2)A prohibition order under this section is an order imposing such prohibition or prohibitions on the use of any premises as is or are specified in the order in accordance with subsection (3) and section 22.

(3)Subsections (3) and (4) of section 20 apply to a prohibition order under this section as they apply to one under that section.
(4)A prohibition order under this section may relate to more than one category 2 hazard on the same premises or in the same building containing one or more flats.
(5)A prohibition order under this section may be combined in one document with an order under section 20 where they impose prohibitions on the use of the same premises or on the use of premises in the same building containing one or more flats.
(6)The operation of a prohibition order under this section may be suspended in accordance with section 23
22 Contents of prohibition orders
(1)A prohibition order under section 20 or 21 must comply with the following provisions of this section.
(2)The order must specify, in relation to the hazard (or each of the hazards) to which it relates—
(a)whether the order is made under section 20 or 21,
(b)the nature of the hazard concerned and the residential premises on which it exists,
(c)the deficiency giving rise to the hazard,
(d)the premises in relation to which prohibitions are imposed by the order (see subsections (3) and (4)), and
(e)any remedial action which the authority consider would, if taken in relation to the hazard, result in their revoking the order under section 25.
(3)The order may impose such prohibition or prohibitions on the use of any premises as—
(a)comply with section 20(3) and (4), and
(b)the local housing authority consider appropriate in view of the hazard or hazards in respect of which the order is made.
(4)Any such prohibition may prohibit use of any specified premises, or of any part of those premises, either—
(a)for all purposes, or
(b)for any particular purpose, except (in either case) to the extent to which any use of the premises or part is approved by the authority.
(5)A prohibition imposed by virtue of subsection (4)(b) may, in particular, relate to—
(a)occupation of the premises or part by more than a particular number of households or persons; or
(b)occupation of the premises or part by particular descriptions of persons.
(6)The order must also contain information about—
(a)the right under Part 3 of Schedule 2 to appeal against the order, and
(b)the period within which an appeal may be made,
and specify the date on which the order is made.
(7)Any approval of the authority for the purposes of subsection (4) must not be unreasonably withheld.
(8)If the authority do refuse to give any such approval, they must notify the person applying for the approval of—
(a)their decision,
(b)the reasons for it and the date on which it was made,
(c)the right to appeal against the decision under subsection (9), and

(d)the period within which an appeal may be made, within the period of seven days beginning with the day on which the decision was made.
(9)The person applying for the approval may appeal to the appropriate tribunal against the decision within the period of 28 days beginning with the date specified in the notice as the date on which it was made.
(10)In this Part of this Act "specified premises", in relation to a prohibition order, means premises specified in the order, in accordance with subsection (2)(d), as premises in relation to which prohibitions are imposed by the order

Annex
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).