



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

Case Reference : **BIR/00CS/HPR/2020/0001**

HMCTS : **V: CLOUD VIDEO PLATFORM**

Property : **280A High Street, West Bromwich,
West Midlands, B70 8AQ**

Applicant : **Mr Z Shah**

Representative : **Mr S I Ali**

Respondent : **Sandwell Metropolitan Borough Council**

Representative : **Counsel – Mr A Barnfield of No. 8
Chambers, Fountain Court**

Type of Application : **An appeal against a decision of a Local
Authority to refuse to vary or revoke a
Prohibition Order under paragraph 9 of
Schedule 2 to the Housing Act 2004**

Tribunal Members : **Judge M K Gandham
Mr R Chumley-Roberts MCIEH, JP
Mr A McMurdo MCIEH**

Date of Hearing : **13 November 2020**

**Date of Reconvene
following Inspection** : **26 October 2021**

Date of Decision : **6 December 2021**

DECISION

Covid-19 Pandemic: Remote Video Hearing

This determination included a remote video hearing which had been consented to by the parties. The form of remote hearing was Video (V: CLOUD VIDEO PLATFORM). A face-to-face hearing was not held because it was not practicable, no-one requested the same and all issues could be determined in a remote hearing/on paper. The documents referred to were contained within the parties' bundles, the contents of which are noted.

Pursuant to Rule 33(2A) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, and to enable this case to be heard remotely during the COVID-19 pandemic in accordance with the Pilot Practice Direction: Contingency Arrangements in the First-tier Tribunal and the Upper Tribunal, the Tribunal directed that the hearing be held in private. The Tribunal had directed that the proceedings were to be conducted wholly as video proceedings; it was not reasonably practicable for such a hearing, or such part, to be accessed in a court or tribunal venue by persons who were not parties entitled to participate in the hearing; a media representative was not able to access the proceedings remotely while they were taking place; and such a direction was necessary to secure the proper administration of justice.

Decision

1. The Tribunal orders that:
 - the decision of the Local Authority be reversed, and
 - the Prohibition Order dated 20 October 2017 be revoked from the date of this decision.

Reasons for Decision

Introduction

2. On 23 March 2020, the First-tier Tribunal (Property Chamber) received an application from Mr Zakir Shah ('the Applicant'), under paragraph 9 of Schedule 2 to the Housing Act 2004 ('the Act'), to appeal against the decision of Sandwell Metropolitan Borough Council ('the Respondent') to refuse to vary or revoke the Prohibition Order dated 20 October 2017 ('the Prohibition Order') for the property known as 280A High Street, West Bromwich, West Midlands, B70 8AQ ('the Property') - of which the Applicant is the holder of a long lease.
3. On 17 August 2020, following a hearing to determine whether the Tribunal had jurisdiction in relation to the application, the Tribunal found that it had and Directions were issued in relation to the substantive matter. All inspections of Properties were suspended at the time due to the COVID-19 pandemic, under 'The Pilot Practice Direction: Contingency Arrangements in the First-tier Tribunal and the Upper Tribunal' dated 19 March 2020.

4. The table in the Schedule to this decision details the items that were included within the Prohibition Order. The Respondent was asked to complete a Scott Schedule itemising the works contained in the Prohibition Order and stating which of the items the Respondent considered were still outstanding and the reasons why. On 20 October 2020, as the Tribunal had not received the Applicant's Statement of Case, a further Directions Order was issued.
5. A hearing was arranged and took place on 13 November 2020 when, after hearing the parties' submissions and noting that many of the items of work detailed in the Prohibition Order were still in dispute, the Tribunal considered that an internal inspection of the Property was essential to determine the matter. The Tribunal did not consider that either photographs (which had been produced at the hearing) and/or videos of the condition of the Property would suffice in making its determination due to the nature of the works.
6. Although an 'Amended General Pilot Practice Direction: Contingency Arrangements in the First-tier Tribunal and the Upper Tribunal' was issued on 14 September 2020 and revised on 18 March 2021, due to fluctuating infection rates, no internal inspections were being conducted as they could not be accommodated safely. Matters in which an internal inspection was considered essential to deal with a case fairly and justly and in accordance with the overriding objective were, therefore, stayed pending a further amendment or withdrawal of the direction. Accordingly, the matter was stayed as the Tribunal considered that this case could not be dealt with fairly and justly and in accordance with the overriding objective without an internal inspection.
7. On 9 September 2021, the President of the Property Chamber issued Guidance for resuming internal inspections from 20 September 2021. The Tribunal wrote to the parties on 17 September 2021 to confirm that the Tribunal would be carrying out an internal inspection on 26 October 2021, following which the Tribunal would reconvene to make its decision.

The Law

8. 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.
9. 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.
10. 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.”*

11. 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 9.

(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

12. An oral hearing was held via CVP on 13 November 2020. The Applicant was represented by his son, Mr Ali. Mr Barnfield (Counsel) represented the Respondent and was accompanied by Mr Wright (an Operations Manager for the Respondent), Miss Simms (from the Respondent’s legal department), Mrs Mahiques (a Senior Finance Officer for the Respondent), Mr Smith (a Senior Building Surveyor for the Respondent) and Mrs Westwood (a Fire Safety Inspecting Officer).

Submissions

13. Mr Ali, on behalf of Mr Shah, confirmed that the application was made in relation to the refusal by the Respondent to revoke the Prohibition order. He stated that the works had been completed and that the Applicant was dissatisfied with the Respondent’s decision and their overall conduct in the matter.

14. Mr Ali stated that the Applicant had pursued action in the County Court against the Respondent and that, as part of that action, he had proposed that an independent surveyor carry out an inspection of the Property to check whether the works had been completed. He stated that this was suggested as the Applicant believed that the Respondent may have been biased against him, as he had made a discrimination claim against one of the officers with conduct of the matter. He stated that the proposal for an independent report had not been accepted by the Court.
15. Mr Ali submitted that, following the Tribunal's decision to vary the Prohibition Order in April 2018, the Applicant had carried out various works on the Property and that the Respondent had initially refused to carry out an inspection, despite the Applicant having sent and hand-delivered photographs to the Respondent evidencing that the works had been completed.
16. Mr Ali stated that, when the Respondent eventually decided to carry out an inspection, he would sometimes receive less than 24 hours' notice, so had, sometimes, been unable to accommodate them. Mr Ali stated that the final inspection carried out by the Respondent, in November 2019, detailed a number of works which went further than what was required by the Tribunal in the Prohibition Order.
17. Mr Ali stated that all of the works had been carried out to a good standard and that the items detailed in a Prohibition Order no longer constituted hazards, so the Prohibition Order should have been revoked by the Respondent under section 25(1) of the Act.
18. Mr Ali also submitted that a number of the photographs in the Respondent's bundle had been labelled incorrectly and that some appeared to be historical photographs. He stated that the Applicant's photographs had been taken more recently, some in December 2019 and others in January and March 2020.
19. Mr Barnfield, on behalf of the Respondent, stated that Mrs Mahiques' witness statement confirmed when the photographs were taken. He stated that the Respondent disputed that any of the photographs had been mislabelled but submitted that, in any event, the photographs clearly showed that works had not been carried out to an acceptable standard.
20. Mr Barnfield stated that the Applicant had opposed the Prohibition Order in 2017 and that the Tribunal had, at that time, agreed that a Prohibition Order was reasonable, albeit it had varied some of the works required. He stated that the Respondent, having carried out various inspections since the Tribunal's last decision, disputed that all of the works had been carried out and believed that the Applicant simply wanted to derive a rental income from the Property to complete the works, which he was unable to do whilst a Prohibition Order was in place.
21. The Respondent, in their Statement of Case, submitted that they had not acted unreasonably in their conduct of the matter and that they had responded to the Applicant's numerous requests for inspections.

22. The Respondent stated that they had conducted four full inspections and three limited/failed inspections, in addition to the site visit as part of the previous tribunal application. The Statement of Case included a chronology of events detailing the various inspection dates and Court action, which was dismissed in July 2019. It also confirmed that the last inspection was carried out on 27 November 2019 and that, following that final inspection, a letter was sent to the Applicant on 13 December 2019, which confirmed the Respondent's decision not to revoke or lift the Prohibition Order.
23. The Respondent's bundle contained a witness statement from Mr Wright, who gave a brief background of the history of the matter. He stated that, on an inspection on 28 November 2018, no works had been undertaken to provide interlinked fire detection to the residential premises or any insulation to the extractor unit. He stated that a number of items of work were still outstanding on a further inspection carried out on 9 April 2019 and that this was still the case on the final inspection, carried out on 27 November 2019. Mr Wright stated that, following this final inspection, a schedule of works was sent to the Applicant on 13 December 2019 to assist him in recognising what works were required, not only to revoke the Prohibition Order, but also for HMO (houses in multiple occupation) licensing purposes.
24. The Respondent's bundle also included witness statements from Mrs Mahiques, Mrs Westwood and Mr Smith, all of whom attended the final inspection on 27 November 2019 with Mr Wright.
25. In relation to the items detailed as outstanding on the Scott Schedule (which correlate with the items detailed in the Schedule attached), the Respondent was satisfied that Item 2 had been completed. In relation to Item 10, Mr Wright confirmed that the kitchen facilities had been moved away from the flat entrance doors and that the additional works the Respondent referred to on the Scott Schedule related to items that would be required for the Property to be able to obtain a HMO licence. In relation to Item 15, Mr Wright confirmed that, as the room next to the exhaust ventilation now formed part of a communal area, no further action was required by the Respondent in that regard.
26. In relation to the remaining items, the Respondent was not satisfied that the works detailed in Item 1 and Item 3 had been carried out an acceptable standard and in the Scott Schedule referred to a number of defects, including, the fire integrity of the doors, the gaps around the doors and the renewal of architraves and seals. In relation to Item 3, the Applicant stated that an independent certification of the doors had already been provided.
27. In relation to Item 4, the Respondent stated that the fire detection system was still a Grade B system and did not include the commercial installation. The Respondent stated that electrical certification would also be required for Item 5 and Item 6.
28. In relation to Item 7 and Item 8, the Respondent stated that, although the Applicant had provided two surveyor's reports confirming the fire separation,

the surveyors had failed to provide an answer as to the methodology used to determine the one hours' fire resistance compliance for Item 7. Mr Smith confirmed that this could only really be checked by drilling through the plasterboard which would damage the integrity of the separation, however, stated that from a visual inspection, the plasterboard did not appear to be fire rated. Mr Wright also referred to the fact that the surveyors' reports were carried out in 2018, which would have been a snap-shot of the works at that time and predated some of the works having been completed. Mr Ali stated that the Respondent did not ask whether they could see the material before it had been fitted and, had they done so, this could have been arranged. He confirmed that the Applicant had obtained an independent surveyor's report, as required by the Prohibition Order, and that this confirmed the fire separation.

29. In relation to Item 9, the Respondent stated that they were satisfied that the boiler had been relocated but requested additional information and confirmation of hot water provision as this could not be sourced during the inspection. Mr Wright stated that they had not had sight of the Gas Safety Certificate. Mr Ali confirmed that he would forward this to the Respondent.
30. In relation to Item 11, Item 12 and Item 14, Mr Wright stated that they had not been provided with the electrical certificates. Mr Ali confirmed that these would be provided to the Respondent and to the Tribunal as soon as they were available.
31. In relation to Item 13, the Applicant confirmed that the window restrictors had been installed and that these could be seen in the photographs in the Applicant's bundle.
32. The Tribunal was conscious of the reservations of both parties due to the history of the matter and noted that there was a great deal of mistrust on the part of the Applicant as to the Respondent's actions. It was also quite clear from the submissions made that, in particular, items 1, 8, 9, 11 and 13 could not be resolved without an inspection by the Tribunal. As such, the Tribunal confirmed to the parties at the end of the hearing that an internal inspection would be required for the Tribunal to make its determination.

Inspection

33. The Professional Members of the Tribunal panel inspected the Property and ground floor premises on 26 October 2021 in the presence of the Applicant's son, Mr Ali. Mr Wright attended on behalf of the Respondent and was accompanied by Mr Barnfield.
34. The Property forms part of a pre-1920, three storey, mid-terrace building located on the High Street in West Bromwich. Two commercial units are located on the ground floor and a door, which leads to the Property, is located to the right hand side of number 280, High Street.
35. The door to the Property opens to a staircase, which leads to a small first floor landing. A doorway leads to a first floor inner lobby (the door was missing), on

which are located three separate units of accommodation (Flats 1A, 1B and 1C) and a communal room which contains a lounge/dining room, from which the kitchen is accessed. A second stairwell, similarly, leads to a small second floor landing, with a doorway leading to a second floor inner lobby, on which are located three further units of accommodation (Flats 2A, 2B and 2C).

36. The inspection was of all of the items of work detailed in the Prohibition Order.

Inspection findings and Tribunal’s Deliberations

37. Following the inspection, the Tribunal reconvened to deliberate over the findings and to consider each of the items detailed in the Prohibition Order, taking into account all of the evidence submitted by the parties, both oral and written and summarised above.

38. The findings at the inspection and Tribunal’s deliberations in relation to each of the items (as detailed in the Schedule attached) are as follows:

Item	Inspection Findings	Tribunal’s Deliberations
1	<p>Fire doors had been fitted on each of the doors to the flats and each of the doors had self-closing devices.</p> <p>There were a number of defects outstanding: the doors to Flat 2A and Flat 2B did not close flush (some planing work was required to Flat 2A and there was an issue to the rim latch on the door to Flat 2B). In addition, all of the doors required re-tensioning and a section of frame was split by the keep, to the door to Flat 1A.</p> <p>There were gaps of over 4 mm between the heads of the frames and the doors of flats 1A, 1B, 1C and communal area 1D.</p>	<p>The Tribunal was satisfied that the doors appeared to be fire doors and that this was confirmed by both of the surveyors instructed by the Applicant in their respective reports.</p> <p>Although the Tribunal noted that there were still some works that required completing, the Tribunal no longer considered that this item was a category 1 hazard, in particular, in conjunction with the Grade A fire detection system, which they saw as greatly lessening harm outcomes in the event of fire.</p>
2	<p>Thumb turn locks had been provided to each of the doors.</p>	<p>The Tribunal was satisfied that the works had been completed.</p>

3	The second floor lobby door was satisfactory, however, the first floor lobby door was missing and needed reinstating to the same specification i.e. it needed to be a FD30S fire door, with a self-closing device, intumescent smoke seals, cold smoke seals and a threshold gap of no more than 4 mm.	The Tribunal was satisfied with the works to the second floor fire door. The Tribunal noted that the first floor lobby door was missing, but did not consider this to be a category 1 hazard.
4	A Grade A fire detection system covering all risk rooms and interlinked with the commercial accommodation had been installed and appeared to be working.	The Tribunal was satisfied with the fire detection system after it was activated. A British Standards installation conformity certificate for the alarm had been provided to the Tribunal on 21 February 2021.
5	The alarm had been installed. There was no heat detector in the kitchen but there was a smoke detector in the kitchen and dining area.	See above. The Tribunal noted that there was a smoke detector in the kitchen and dining area and a Grade A fire detection system had been installed. The Tribunal was satisfied that a category 1 hazard no longer existed
6	Not applicable.	An up to date installation certificate for the emergency lighting had been provided to the Tribunal on 5 February 2021.
7	There was a small section of ceiling boarding missing (it had been removed) in part of the ground floor commercial unit, which required reinstating.	The Tribunal noted that the Prohibition Order required a qualified surveyor to inspect and provide certification that the standard was met. The Applicant had provided two separate reports from two qualified surveyors, who had both, following their

		<p>inspections in 2018, confirmed that there was at least one hour's fire separation between the commercial premises and the residential units.</p> <p>The Tribunal was satisfied with the reports and no longer considered that a category 1 hazard existed, even more so since a Grade A interlinked fire detection system had been installed, although the missing section of ceiling board in the ground floor commercial unit required reinstating.</p>
8	The remedial works had been completed.	<p>Both of the surveyors' reports provided by the Applicant confirmed the 30 minutes' fire separation. The Tribunal is satisfied that all other remedial works had been carried out.</p>
9	The boilers had been re-positioned in the communal area and had been boxed in.	<p>The Tribunal noted that the Prohibition Order only required that the boilers be relocated in a safe, non-fire escape route, and was satisfied that this had been done.</p>
10	The kitchen facilities had been removed from the individual flats and relocated to the communal kitchen.	<p>The Tribunal was satisfied that the works detailed in the Prohibition Order had been completed.</p>
11	The remedial works had been completed.	<p>The Tribunal was satisfied that the works had been completed and a NAPIT electrical condition report had been provided to the</p>

		Tribunal on 5 February 2021.
12	Not applicable.	A NAPIT electrical condition report had been provided to the Tribunal on 5 February 2021.
13	Window restrictors had been installed on each of the windows. The window restrictor in the dining room had been broken and required replacing.	The Tribunal was satisfied that the works had been completed, other than the restrictor to the dining room which required replacing. The Tribunal considered this to be a low ranking category 2 hazard.
14	The remedial works had been completed.	The Tribunal was satisfied that the works had been completed and a NAPIT electrical condition report had been provided to the Tribunal on 5 February 2021.
15	Not applicable.	The Respondent had already confirmed that no further action was required in respect of this item. The Tribunal agreed.

39. The Act confirms that the Tribunal may, by order, confirm, reverse or vary the decision of the local housing authority.
40. The Tribunal notes that there are some items of work that still require completing, which is surprising considering the Property has been empty for over three years, however, it is satisfied that no category 1 hazards exist at the Property and that the Applicant has also rectified or reduced the category 2 hazards detailed in the Prohibition Order to an acceptable level.
41. Although the Tribunal considers that the defects highlighted in items 1, 3, 7 and 13 (in paragraph 38 above) could constitute low ranking category 2 hazards, it does not consider that confirming or varying the Prohibition Order for these four items would be reasonable or the best course of action in relation to the hazards. Accordingly, the Tribunal considers that the decision of the

Respondent should be reversed and that the Prohibition Order should be revoked from the date of this decision.

Appeal Provisions

- 42. 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).

M. K. GANDHAM

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Judge M. K. Gandham

SCHEDULE

Items of Works

Item	Works detailed in Prohibition Order
1	<p>Ensure that all flats have FD30S fire doors as entrance doors and provide certification that each door is compliant with this standard.</p> <p>Each door must have self-closing devices, have intumescent smoke seals, cold smoke seals and a threshold gap of no more than 4mm. Each door must close flush by themselves when opened and released.</p>
2	<p>Each flat entrance door must be provided with only non-key operated (thumb turn) locks, to ensure occupiers can quickly evacuate each flat.</p>
3	<p>Ensure that all doors enclosing the lobbies at first and second floor levels are FD30S fire doors and provide certification that each door is compliant with this standard.</p> <p>Each door must have self-closing devices, have intumescent smoke seals, cold smoke seals and a threshold gap of no more than 4mm. Each door must close flush by themselves when opened and released.</p>
4	<p>Engage an NICEIC/NAPIT/ECA certified electrical engineer to install a Grade A fire detection system with interlinked detection in all rooms (except bathrooms) and hallways and that this is interlinked with all rooms in the ground floor commercial accommodation. The NICEIC/NAPIT/ECA electrical engineer to certify that the system complies with the relevant standard and this certification is to be forwarded to the Local Authority.</p>
5	<p>Engage an NICEIC/NAPIT/ECA certified electrical engineer to install a Grade A fire system with interlinked wired smoke detection system (with heat detection over each kitchenette) in each flat, hallway and stairwell. With touch points in all hallways. The system should be connected to the emergency lighting system and be interlinked with the ground floor commercial premises which should also have interlinked detection in all areas with touch points and emergency lighting. There should be a fully functioning control panel for the system, preferably in the ground floor porch area near the main front entrance door to the residential units of accommodation. The West Midlands fire service should be consulted on its location prior to</p>

	installation. The NICEIC/NAPIT/ECA electrical engineer to certify that the system complies with the relevant standard and this certification is to be forwarded to the Local Authority.
6	Engage an NICEIC/NAPIT/ECA certified electrical engineer to inspect the existing emergency lighting system and undertake all necessary remedial works, and specifically to ensure that all back up batteries are charging and indicator lamps operate. The NICEIC/NAPIT/ECA electrical engineer to certify that the system complies with the relevant standard and this certification is to be forwarded to the Local Authority.
7	Ensure that there is at least a one hour fire separation between the ground floor commercial premises and the residential elements of the building. Engage a suitably qualified surveyor/engineer to inspect and provide certification that this standard is met and forward this certification to the Local Authority.
8	Ensure that all internal walls, ceilings and floors between flats, between flats and lobbies and between lobbies and stairwells have at least 30 minutes fire separation. Ensure that there are no gaps, holes etc. in plasterwork and all are constructed with suitable materials and that hatches and glass is all sufficient to withhold fire for 30 minutes. Ensure all access hatches to the roof space meet this 30 minute fire resistance standard. Engage a suitably qualified surveyor/engineer to inspect and provide certification that this standard is met and forward this certification to the Local Authority.
9	Remove and suitably relocate in a safe, non fire escape route, the two central heating boilers located on the escape stairway, or ensure that the two central heating boilers and their associated gas service pipes, are contained within fire resisting materials that provide at least 30 minutes fire resistance.
10	Move all kitchen facilities and spaces away from the flat entrance doors. Occupiers should not have to pass by these facilities to exit any flat.
11	Engage an NICEIC/ECA certified electrical engineer to inspect and then repair/renew all existing broken loose or otherwise defective electrical sockets light fittings etc. within all flats.

	Electrical engineer to provide additional electrical sockets within each flat to ensure that as a minimum there are two double socket outlets in each kitchenette.
12	On completion of all works, engage an NICEIC/NAPIT/ECA certified electrical engineer to provide a periodic inspection report for all electrical fittings/wiring etc. Any remedial works are to be attended too and the NICEIC/NAPIT/ECA electrical engineer report is to be forwarded to the Local Authority.
13	Ensure that all windows in the flats are fitted with child safe window restrictors and that they can be released by an adult without the need for a key.
14	Engage an NICEIC/ECA certified electrical engineer to inspect and then repair/renew all existing broken loose or otherwise defective electrical sockets light fittings etc. within all flats. Electrical engineer to provide additional electrical sockets within each flat to ensure that as a minimum there are two double socket outlets in each kitchenette.
15	Remove or relocate the exhaust ventilation ducting and outlet (or if possible insulate as necessary) away from the flank wall of flat 1D.