FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	**:**	**CAM/11UF/HIN/2019/0006**
Property	**:**	**261 Hithercroft Road, High Wycombe, Bucks HP13 5RD**
Applicant	**:**	**Mr Francesco Ellul**
Representative	**:**	**In person**
Respondent	**:**	**Wycombe District Council**
Representative	**:**	**Mrs A Thomlinson, solicitor with the Council and Mr T Charlesworth Environmental Health officer**
Type of application	**:**	**Appeal in respect of an improvement notice**
Tribunal members	**:**	**Tribunal Judge Dutton Mr C P Gowman BSc MCIEH MCMI Mr O N Miller BSc**
Venue and date of hearing	**:**	**Holiday Inn, Handy cross High Wycombe on 18th October 2019**
Date of decision	**:**	**21st October 2019**

DECISION

The Tribunal quashes the Improvement Notice issued by Wycombe District Council in respect of the property 261 Hithercroft Road, High Wycombe Bucks HP13 5RD for the reasons set out below.

Background

1. On 8th July 2019 the applicant Mr Francesco Ellul applied to the Tribunal seeking to appeal against the decision by Wycombe District Council (the Council) to issue an Improvement Notice on 17th June 2019 (the Notice). The property in question is 261 Hithercroft Road, High Wycome Bucks (the Property).

2. The Notice stated that the Council considered there were Category 1 hazards at the Property relating to fire issues. The statement of reasons highlights inadequate means of escape in case of fire and that the Property lacked adequate smoke and fire safety provisions.

3. The schedule annexed to the Notice set out the works to be undertaken. These included the fitting of internal half hour fire doors to the Property, save for the bathroom and kitchen, the latter room having already been fitted with a suitable fire door; installation of hard wired smoke detectors to the bedrooms; the changing of the glass borrowed light above the doors at first floor level; changes to the locks to the front and back door and making the meter/fuse cupboard half hour fire resistant.

4. Directions were given on 6th August 2019 for the determination of the appeal. The parties met, but no agreement could be reached and the matter came before us for hearing on 18th October 2019.

Inspection

5. We inspected the Property before the hearing on 18th October 2019. This was in the presence of Mrs Thomlinson and Mr Charlesworth. The applicant did not attend but access was afforded by Mr Maliangkaij, a tenant at the Property. The Property is a two-storey inner terraced house having two living rooms at ground floor level, one being an inner room used a bedroom, a kitchen and toilet. On the first floor there are three bedrooms and a bathroom. To the rear is a small largely paved garden with access to a rear service road.

6. We noted that only the kitchen had a fire door. There were smoke detectors in the hall and landing as well as the living room and kitchen. There was a carbon monoxide alarm in the living room. At the time of our inspection it appeared that there were four persons living at the Property, including a six week old baby. The occupants lived in two family units with Mr Maliangkaij and his partner, with baby, occupying the first floor and another tenant occupying the back inner bedroom.

7. The Property was as described in the detailed statement of Mr Charlesworth dated 25th September 2109, which was included within the bundle provided to us for the hearing.

Hearing

8. At the commencement of the hearing we were provided with a fresh skeleton argument prepared by Mrs Thomlinson. The difference between this skeleton argument and the one provided in the advance of

the hearing was the inclusion of the wording to be found at section 10 of the Housing Act 2004 (the Act).

9. This section says as follows;

10 Consultation with fire and rescue authorities in certain cases

(1)This section applies where a local housing authority—
(a)are satisfied that a prescribed fire hazard exists in an HMO or in any common parts of a building containing one or more flats, and
(b)intend to take in relation to the hazard one of the kinds of enforcement action mentioned in section 5(2) or section 7(2).
(2)Before taking the enforcement action in question, the authority must consult the fire and rescue authority for the area in which the HMO or building is situated.
(3)In the case of any proposed emergency measures, the authority's duty under subsection (2) is a duty to consult that fire and rescue authority so far as it is practicable to do so before taking those measures.
(4)In this section—

- *"emergency measures" means emergency remedial action under section 40 or an emergency prohibition order under section 43;*
- *"fire and rescue authority" means a fire and rescue authority under the Fire and Rescue Services Act 2004 (c. 21);*
- *"prescribed fire hazard" means a category 1 or 2 hazard which is prescribed as a fire hazard for the purposes of this section by regulations under section 2.*

10. Discussions with Mrs Thomlison and Mr Charlesworth explained the situation pertaining to this consultation process. It appears that there is a memorandum of understanding between the council and the Fire and Rescue Authority (FRA). There is a protocol but we were not provided with a copy. The everyday practice for some Officers was to adopt the LACORS guidance and only refer to the FRA in exceptional circumstances. There is no guidance as to the form of contact the Council should have with the FRA. We were told that apparently there is only one Fire Inspector serving much, if not all of Buckinghamshire and that person is based in Milton Keynes.

11. It seems the Council has developed three forms of communication. If the property in question is, in the opinion of the Council, 'standard' then the LACORS guidance is applied without referral to the FRA. If the property is unusual then there would be contact with the FRA by email, although this does not always elicit a response. If there are exceptional circumstances, then an inspection would be arranged with the FRA.

12. In this case there was no contact with the FRA and Mr Charlesworth relied solely on the LACORS guidance and his experience. An HHSRS assessment was carried out.

13. We gave the parties the opportunity to discuss the Schedule of work and a good deal of agreement was reached. Mr Ellul asked that we gave him guidance on whether or not he needed to replace the interior doors with suitable fire doors. We shall return to the works in due course.

14. We expressed our concern to the parties about the mandatory wording of section 10 and our findings on this point are as follows.

The tribunal's decision

15. The tribunal determines that:

    (i) the appeal is allowed;

    (ii) the Notice is quashed;

Reasons for the decision

16. It is our finding that the wording of section 10 of the Act imposes an obligation on the Council to consult with the FRA. At section 10(1)(b) it is clear that if the Council is intending to take enforcement action, in this case an Improvement Notice, then consultation must be had with the FRA. If this were an emergency then the Council may be saved by 10(3), but it is not. The provisions of 10(2) are clear. The Council must consult with the relevant FRA if it intends to take the course of action of issuing an Improvement Notice. It, by its own admission, did not. Instead it seems the Council has adopted some form of protocol which would appear to seek to circumvent this section, in some cases such as this one. We do not wish to be seen as being unnecessarily critical of the Council. We understand the difficulties caused by the apparent lack of staff at the fire authority. However, we do not consider these difficulties enable the Council to introduce its own protocol which seeks, in certain circumstances to remove the need to follow the law.

17. It may be that some arrangement could be reached with the FRA, which enables details to be submitted to a certain standard, perhaps by email, that would enable the FRA to consider the matter and advise without the need to inspect and in such a time scale that enables the Council to meet its statutory requirements under the Act.

18. We consider it may be helpful for the parties, moving on from here, if we give some indication of the findings we would have made had we not considered that the Notice was ineffective. Indeed, we were asked by Mr Ellul to do just that.

19. Mr Ellul and the Council indicated that by reference to Schedule 1 annexed to the Notice that, subject to our views on the need for fire doors, the wording of paragraph 2 – 8 was largely agreed and the works

would be undertaken by Mr Ellul. The changes agreed in a meeting between the parties were:

- Para 2 remove the wording "on the First Floor" so that all borrowed glass would be attended to.
- Para 4 will now read " To protect the cupboard under the stairs ensure that the staircase (which forms the ceiling of the cupboard under the stairs) is underlaid with 12.5mm plaster board and the door to the cupboard is replaced with a door which is ½ hour fire resistant standard to comply with BS476 22, 23 and 31"
- Para 7 is amended to delete the wording "and bedroom doors"
- Otherwise, save for paragraph 1 of the Schedule Mr Ellul confirmed he would undertake the works, presumably in a time scale that is satisfactory to the Council, given our finding.

20. We indicated to Mr Ellul that having inspected the Property and considered the LACORS guidance as well as Mr Charlesworth's statement and the Council's skeleton argument, we were satisfied that it was appropriate to replace all bedroom and the living room doors as provided for at paragraph 1 of the Schedule of works annexed to the Notice. We must make it clear that this is not our decision, just guidance.

Name: Tribunal Judge Dutton **Date:** 21st October 2019

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).