



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

Case reference : **BIR/37UJ/HPO/2020/0004**

Property : **Park Lane Farm, 14 Park Lane, Sutton
Bonington, LE12 5NH**

Applicant : **Mr M Wright**

Representative : **Mr M Linley**

Respondent : **Rushcliffe Borough Council**

Representative : **Mr M Paget (counsel - instructed by
Rushcliffe Borough Council Legal Dept.)**

Type of application : **Appeal against a Prohibition Order
issued under the Housing Act 2004**

Tribunal member : **Judge C Goodall
Mr P Wilson BSc (Hons) LLB MRICS MCIEH
CEnvH**

**Date and place of
hearing** : **27 & 28 January and 17 & 18 March 2021**

Date of decision : **20 April 2021**

DECISION

Decision

The Tribunal determines that the Prohibition Order dated 9 July 2020 in respect of Park Lane Farm, Sutton Bonington, LE12 5NH be quashed.

Background

1. On 9 July 2020, Rushcliffe Borough Council (“the Council”) issued a Prohibition Order (“the Order”) in respect of Park Lane Farm, 14 Park Lane, Sutton Bonington, LE12 5NH (“the Property”), operative from 6 August 2020, prohibiting the use of the Property as residential or commercial premises or for all other purposes except by Michael J Wright or his immediate family.
2. On 5 August 2020 Mr Wright appealed against the Order.
3. Both parties provided statements of case in accordance with Directions made by the Tribunal dated 19 August 2020, and the case was listed for a paper determination.
4. This Tribunal met (virtually) on 13 November 2020 to determine the application on paper, but it became apparent to us that there were substantial disputes between the parties on the facts and it would not be possible to do justice without an oral hearing and an inspection.
5. The case was therefore listed for oral hearing over two days on 27 and 28 January 2021. This coincided with a Covid national lockdown and physical inspections were not permitted. The Council were not so restricted, and they carried out a further inspection on 19 January 2021. A suite of videos and photographs were produced to remedy, so far as possible, the inability of the Tribunal to carry out its own inspection.
6. The hearing over 27 and 28 January 2021 did not conclude and a further two days of hearing on 17 and 18 March 2021 took place. Mr Wright was represented by Mr Linley, a lay representative who is a friend of Mr Wright, and the Council were represented by Mr Paget of counsel.
7. This document sets out the Tribunal’s decision, with the reasons for reaching it.

Law

8. Before commencing our examination of the facts and issues in this case, we set out the legal framework which is engaged by the application.
9. The Respondent is responsible, under statute, for the operation of a regime designed to evaluate potential risks to health and safety from deficiencies in dwellings, and to enforce compliance with the standards required. The scheme is called the Housing Health and Safety Rating

System (HHSRS). It is set up in the Act, supplemented by the Housing Health and Safety Rating System (England) Regulations 2005 (“the Regulations”).

10. 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. The scoring system is explained later.
 - 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.
11. 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.
12. The right to carry out the inspection is derived from section 239 of the Act. This section gives the local authority a power of entry for the purposes of carrying out a section 4 inspection. The inspector must have been properly authorised to carry out that inspection, and (in sub-section 5), the authorised officer must have given at least 24 hours' notice of his (her) intention to inspect to the owner (if known) and the occupier (if any).
13. Section 5(1) of the Act provides that:

“If a local authority consider 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”.
14. Section 5(2) says that the appropriate enforcement action means whichever of the following courses of action is indicated. Those courses of action are:
 - Improvement notice
 - Prohibition order
 - Hazard awareness notice
 - Emergency remedial action

- Emergency prohibition order
 - Demolition order
 - Declaration of a clearance area
15. 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. Section 5(4) says that if two or more courses of action within subsection (2) are available to the authority in relation to the hazard, they must take the course of action which they consider to be the most appropriate of those available to them.
 16. By section 7 the authority has a power (but not a duty) to take action in respect of a category 2 hazard. The enforcement options for a category 2 hazard are slightly different from the options for a category 1 hazard, but they include the power to issue an Improvement notice, make a Prohibition Order, or issue a Hazard Awareness notice.
 17. Section 20 of the Act gives greater detail of the requirements for a Prohibition Order for a category 1 hazard if the local authority decides to issue one (and they must take some form of remedial action under section 5 above). 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.
 18. Section 22 specifies that a Prohibition Order must specify:
 - a. Whether the notice is served under section 20 or 21 of the Act
 - b. The nature of the hazard and the residential premises on which it exists
 - c. The deficiency giving rise to the hazard
 - d. The premises in relation to which remedial action is to be taken in respect of the hazard and the nature of that remedial action, and
 - e. Any remedial action which the local authority consider appropriate in view of the hazard or hazards in respect of which the order is made.
 19. Section 22(4) gives the local authority the power to specify whether the prohibition is for all purposes or for a particular purpose.
 20. Section 24 provides that the Prohibition Order comes into effect at the end of 28 days beginning with the date the Order is made.
 21. Section 23 permits the suspension of a Prohibition Order and section 25 provides for revocation or variation of a Prohibition Order. The local authority must revoke an Order if at any time they are satisfied that a hazard in respect of which the Order was made does not exist on the premises.
 22. Schedule 2 Part 3 of the Act deals with appeals in relation to Prohibition Orders. Paragraph 7 sets out a general right of appeal and that an appeal is to what is now the First-tier Tribunal (Property Chamber).

23. Paragraph 11 states that the appeal is to be by way of a rehearing but may be determined having regard to matters of which the authority was unaware. The tribunal may confirm, quash, or vary the Prohibition Order.
24. Section 9 of the Act provides that the UK Government may give guidance to local authorities about exercising their functions (including in relation to enforcement by a Prohibition Order). The local authority must have regard to the guidance. Guidance on enforcement has been issued, dated February 2006.
25. Turning to the method of determining whether a category 1 or category 2 hazard exists (i.e., the operation of the HHSRS), this is set out in the Regulations. The procedure is summarised as follows:
 - a. There are 29 specific hazards that are identified in Schedule 1 of the Regulations as risks, 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 any 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 16 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 person (who is a member of the most vulnerable group) as a result of the hazard actually occurring. This is done by assessing the range of outcomes (of which there are 4 distinct classes) by means of the average spread of harms for each dwelling type (which are provided in operating guidance) and the characteristics of and conditions at, the individual dwelling. Each of the 4 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 point for the likelihood of harm for the prescribed hazard and the four harm outcome scores) to produce a single hazard score using a formula set out in Regulation 6(5). Most assessors will use a computer model for this calculation.
 - f. The hazard score will be a single integer. That integer identifies the hazard as a category 1 hazard if the integer is 1,000 or more, and a category 2 hazard if the integer is less than 1,000. Each hazard is also prescribed a band, between A and J according to its actual calculated score, as set out in paragraph 7 of the Regulations.

The Property

The building

26. No physical inspection has been carried out. However, information from the bundles provided by both parties, along with online street view information, shows that the Property is a substantial three-storey former farmhouse with solid walls under pitched roofs with plain tile coverings. The walls have a roughcast render finish above a stepped string course and fair faced brick below. The Property occupies a large plot with some outbuildings. It would appear to be Edwardian, with Mr Wright saying that it was built in 1908. All references to orientation (left and right, front and rear) are references to the Property as viewed when standing in front of it on Park Lane.
27. The front door is located in the centre of the front elevation opening onto a substantial hall with two bed-living rooms on the left (Rooms 10 and 11) and a main kitchen on the right opening off the hall. A dog leg staircase leads to the first floor with a shower and WC and wash-handbasin accessed off this main staircase at a mezzanine level. A door to the rear of the hall gives access to an unheated transverse passageway (i.e., running full width across the back of the house) having the characteristic of being a covered access way with doors at either end. The other side of the passageway then houses two further bedrooms (Rooms 12 and 13) each accessed off the passageway.
28. The left-hand bedroom in the outbuilding (Room 13) contains a door giving access to a staircase to the first-floor landing. The head of this staircase is presently closed with a trapdoor which it is understood was formed from a fire rated door on timber supports.
29. On the first floor there are seven bedrooms around a central landing. Rooms 1 and 2 are located on the right-hand side of the landing; rooms 3, 4, and 5, are located on the left-hand side, and rooms 8 and 9 are located at the rear of the landing overlooking the rear of the Property. A bathroom with shower, WC and wash-hand basin is located adjacent to a staircase leading to the second floor.
30. The second floor contains two more bedrooms (Rooms 6 and 7), a second kitchen and two more bathrooms, each also with shower, WC, and wash-handbasin.
31. Externally there is a large garden at the rear and to the left-hand side of the Property. It is laid to grass with a large hole in the grassed area which appears to have been used as a sort of swimming-pool, with a plastic liner. It does not appear to have been professionally built.

32. There is a driveway on the right-hand side. The ground floor rear passageway can be accessed via an external door to the drive (on the right) and to the rear garden (on the left).
33. At the very rear of the Property, attached to the rear section housing Rooms 12 and 13, there is a single storey section housing a sauna and other outbuildings.
34. There used to be up to five caravans stationed in the rear garden. These had been used as living accommodation by occupants who were in effect part of the Park Lane Farm community. The Council considered these a material change of use and in breach of planning restrictions and an enforcement notice was issued requiring their removal. As at the date of the inspection which resulted in the Order being made, the appeal was running its course, so the caravans were still present. The appeal was determined on 16 July 2020 in the Council's favour. It is understood that, as at January 2021, therefore, the caravans were no longer present in the rear garden, though one caravan remains positioned in the driveway on the right-hand side of the Property although it was said to be unoccupied.

Services and facilities

35. The Property has automatic fire detection with LD2 coverage and a fully addressable fire alarm system. The addressable fire alarm panel is located on the front wall of the ground floor rear passageway. There is detection in each bedroom and the two kitchens in addition to the common parts call points on each floor.
36. The main electrical consumer unit is also located in the passageway at the rear of the Property, with a secondary consumer unit located in the second-floor kitchen. All bedrooms, except two, now have four electrical sockets, though this may not have been the case in the summer of 2020.
37. The Property has gas-fired central heating with radiators in all bedrooms and in the hall and landings. The boiler is a gas fired 30kW floor mounted appliance located in the main kitchen on the ground floor. There is a hot water cylinder located in a cupboard off the first-floor landing.
38. The ground floor rear passageway contains washing machines and dryers. The two kitchens each have a cooker, fridge and washing-up sink with food preparation areas. There is a separate storage room / larder located off the main ground floor kitchen.

The history

39. We recite a chronological history of the relevant facts in this case which we have found, derived from the documents and oral evidence we heard and considered, and which inform the decision we make below.

40. Mr Wright and his former wife bought the Property in 1993 and brought up five children there. Between then and 2012, they also fostered around 30 children, and have provided a home for more than 100 adults as lodgers/tenants. They aimed to offer a welcoming, inclusive environment for a diverse community, including those who needed support and help. Some of those occupants had or had had problems with alcohol abuse and drugs and some were undoubtedly challenging individuals. Some were down on their luck or had relationship breakdowns. Some had no particular issues but just needed a room to stay. Mr Wright states that he is an active Christian, and it appears clear that his offer of the type of accommodation available at the Property is motivated by his faith.
41. Mr and Mrs Wright separated in 2012 and Mr Wright has continued to live at the Property. He has continued to use it as a home for a diverse range of occupants as described above.
42. In or around 2015 the Property came to the attention of the Council, as it was suggested that it was being operated as a House in Multiple Occupation (HMO) under the Housing Act 2004 (“the Act”), and that it therefore required a licence, and planning consent for change of use.
43. Mr Wright applied for planning consent accordingly which was refused by the Council in August 2016, but then granted on appeal on 4 January 2017. He then applied for a licence under the Act, which, according to the Council’s statement of case was issued on 30 March 2017. Curiously, the licence documents provided by both parties are inconsistent, but there is no doubt that Mr Wright has held a licence since at least 5 May 2017.
44. Although an application for a licence does not trigger a full HHSRS inspection of the Property, it is the Tribunal’s understanding that a local authority will always require with an application a range of information to be provided including various documents confirming compliance with regulatory requirements. An inspection may or may not be made at the time of application. In connection with the licence application, Mr Wright was asked for, and supplied, an Electrical Installation Condition Report (“EICR”) on the Property. A copy was supplied to the Tribunal. This report is dated 23 November 2017. It was an inspection of fixed and accessible wiring only. All circuits were tested but not all points on each circuit. The summary report was that the condition of the installation was satisfactory; all circuits are 30mA RCD protected. There were three observations, all accorded Code 3 categorisation (Improvement Recommended). No remedial action was required. At that point, Mr Wright was dealing with a person called Ms Frain at the Council. On receipt of the electrical report, Ms Frain emailed to say she was pleased to acknowledge receipt of the report.
45. On 13 March 2019, Mr Baker, an Environmental Health Officer employed by the Council, carried out an inspection of the Property. This appears to have been a full statutory inspection under Part 1 of the Act. Mr Baker was

not satisfied with the inspection as he had been denied access to parts of the Property. He wrote to Mr Wright on 16 April 2019, referring to his dissatisfaction with the inspection and raising matters of noise nuisance and breach of licence conditions. He said that it was possible that formal action would be taken against Mr Wright.

46. Mr Baker then carried out a further full statutory inspection on 19 June 2019. Because he felt he had not been given full access on 13 March 2019, he obtained a magistrate's court warrant and attended the inspection with the police.
47. The outcome of the June 2019 inspection was that, by letter dated 1 August 2019, the Council served Mr Wright with an Improvement Notice under the Act. The Notice identified two category 1 hazards (Fire Safety and Excess Cold) and one category 2 hazard (Collision).
48. The fire hazard scored 11,461 on the HHSRS scoring system. Eleven deficiencies were recorded in the Notice, seven of which related to doors, their seals, intumescent strips, and closers. The other four deficiencies were inadequate fire protection, inadequate emergency lighting, existence of open fires, and inadequate fire-resistant construction.
49. The remedial action specification for the fire hazard covers six pages, and it is unnecessary to set it out in full. Summarising, a Grade A LD2 fire alarm system throughout the Property, with independent Grade D LD2 fire alarm system in each bedroom, and an emergency lighting system was required.
50. Work around the ceilings and around the rear access staircase in Room 13 was required but the specification required further investigation to identify how the existing construction was configured and options were given depending on the outcome of those investigations. One option for ceilings which were in sound condition (after intrusive investigation) was to overboard the floor above with 3.2mm standard hardboard.
51. Remedial action was required to the bedroom, living room, and ground floor kitchen doors. They were required to be replaced with FD30s doors to BS476. Appropriate specifications for seals, thresholds and door closers were also to be provided.
52. The Excess Cold hazard (score 3,274) was much simpler. Three deficiencies were identified; rotten timber window frames, broken windowpanes, and single glazed windows. Remedial action required was to repair or replace the rotten timber frames to leave them draft free and weatherproof, and to replace all broken windowpanes.
53. The Category 2 Collision hazard (score not given) identified that the glazing to the front door and the two doors to either side of the rear

passageway did not appear to be safety glass. Remedial action required was to replace the existing glazed panels with safety glass.

54. In the statement of reasons accompanying the Improvement Notice, the Council recorded that it considered the appropriate enforcement method was the use of an Improvement Notice. The most significant amount of remedial works required was resolution of the Fire hazard. It considered that the works required to remedy that hazard could be carried out with residents in situ. When giving its reasons for not selecting a Prohibition Order as the enforcement method, the Council said:

“The HHSRS Enforcement Guidance states that a Prohibition 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 works cannot be carried out to remedy a serious hazard with the tenant in residence.

As has been discussed in the Improvement Notice section above, the works to replace doors / frames, install fire detection and emergency lighting systems, and repair or replace windows are not unreasonable from a cost perspective, and neither are they impractical with the tenants in residence.

The remedial works to the ceilings should they prove necessary upon investigation might not be possible with the tenants in residence. However, this will be dependent both on what the investigations show to be the present construction type being used and the remedial option chosen to rectify it.

The Council does not consider it necessary to serve a Prohibition Order.”

55. The Improvement Notice required that work must start by 30 August 2019 and be completed by 22 November 2019.
56. Mr Wright said he carried out a number of remedial works in consequence of the Improvement Notice. Those that he attests to in his statement are:
- a. Installation of an LD2 Grade A fire alarm system with addressable panel, 18 smoke detectors for the bedrooms and hallways, each with sounders, heat detectors in each kitchen, and 3 call points, one on each floor. An Installation Certificate has been provided, dated 22 November 2019;
 - b. Installation of an emergency lighting system for each floor;
 - c. Improvement of the fire protective qualities of internal doors by the application of 3 coats of intumescent paint (supplied by Envirograf), installation of smoke seals, and the filling of voids in the doors with

intumescent paste. Casement door locks were removed, hinges were replaced with fire resistant hinges, and self-closers were fitted to the doors;

- d. Where structural construction was shown not to be adequate to provide 30 minutes fire protection, this was replaced;
 - e. Windows were inspected to ensure they were weatherproof, and some minor repairs were completed;
 - f. Glass in the front door was replaced with safety glass. Glass in the rear doors was either found to be laminated or protected.
57. It should be recorded that the adequacy of some of these works and / or their quality is in dispute.
58. It should also be noted that the timing of some of this work is unclear. Whilst in paragraph 8b of his statement, Mr Wright states that the work on the bedroom doors was undertaken between 1 August and 22 November 2019, in Mr Linley's closing submissions he stated that it was undertaken (or at least some significant amount of work on the doors was undertaken) prior to the Improvement Notice, in compliance with arrangements agreed with Ms Frain and the fire officer when Mr Wright was applying for his licence.
59. The Council followed up the Improvement Notice by carrying out a further inspection on 5 December 2019. Mr Baker was not available, so the inspection was carried out by Mr Geoff Carpenter, the Council's Environmental Health Manager, understood by the Tribunal to be the head of the environmental health services provided by the Council. He was accompanied by a Mr Anderson, an EHO with the Council.
60. There is a note of the inspection in the Tribunal papers. In relation to the three hazards in the Improvement Notice, the note confirms:

Fire hazard

- a. Installation of the fire alarm and the emergency lighting is acknowledged. It is noted that 2 stage smoke alarms rather than heat alarms had been fitted in the bedrooms. Mr Wright's case is that this is a superior specification to that requested by the Council;
- b. Regarding the doors, the note confirms that self-closers, smoke seals and heat strips had been fitted, though there are comments about the quality of that work. New cylinder locks with thumb turns on six doors were noted. It is acknowledged that "attempted upgrade work" had been carried out to eight room doors. The Tribunal assumes this comment relates to the intumescent paint applied to them. The door to room 6 is noted to be a 30-minute standard fire door;

- c. Some works to the structural fire separation problem were noted.
 - i. A solid core hinged fire door had been fitted over the top of the stair opening of the rear staircase leading from room 13 to the first-floor rear landing. It was said to sit in a “solid supported frame”, and it had been fitted with heat seals and smoke seals. The remainder of the opening not filled by the door had been filled with solid 50mm line planks. The note concluded that “this may need further inspection”;
 - ii. The kitchen ceiling had been overboarded with 12.5mm plasterboard and skimmed. The ceiling to the living room had not been overboarded but the note records that Mr Wright said that the floor above had been covered with hardboard;
 - iii. The floors to the rear first floor landing and corridors had been covered with hardboard.

Excess Cold

- d. Windows to the front elevation had been painted and broken glass replaced. The front facing right hand side elevation windows still have evidence of rot and are unpainted, but broken panes had been replaced;
- e. The rear elevation ground floor windows were unpainted with some evidence of rotten wood. There was no evidence of broken panes. Any draught issues with the windows “could not be determined”.

Collision

- f. The report does not mention the collision hazard.
61. We suspect that Mr Carpenter may have asked for copies of the installation certificates for the fire detection and emergency lighting systems at the inspection on 5 December 2019, as on 6 December Mr Wright sent these to him. Receipt was acknowledged on 10 December 2019 by email. In that acknowledgement email, Mr Carpenter said he would liaise further with colleagues and respond again in due course.
62. The Council did not follow up the inspection on 5 December 2019. No correspondence was entered into with Mr Wright about compliance or otherwise with the Improvement Notice. In his written statement, Mr Carpenter states that the position was that “significant works had been completed specifically in respect of fire safety (alarms and lighting) although some works remained outstanding”. In his oral evidence he told us that “his biggest concerns had been complied with”.

63. In his oral evidence to us, Mr Carpenter also told us that he received a lot of complaints about the Property generally. It is common ground that the local community are not favourably inclined to the use to which the Property is put with significant and understandable concern about anti-social behaviour from some of the residents. Mr Carpenter said that in his opinion it was in the wrong place for the type of service which it provided.
64. We have evidence of one complaint of loud noise, residents congregating, and the playing of loud music on or around 9 April 2020. An email was sent by Mr Carpenter to Mr Wright on that date informing him that he had a responsibility to ensure that behaviour was closely controlled, and noise kept to a minimum. Mr Wright challenged whether that was an accurate description of his responsibilities though he acknowledged a licence condition to take all reasonable steps to reduce anti-social behaviour and he said that is what he did. There was apparently a further complaint referred to Mr Wright on 20 May 2020, but no details were supplied to the Tribunal.
65. Mr Wright makes the point that the interactions between himself and Mr Carpenter in April and May 2020 would have been good opportunities for Mr Carpenter to raise any issues he had with the condition of the Property following the Improvement Notice and the inspection in December 2019, but that none were so raised.
66. Mr Carpenter said that he received a further complaint; this time about the condition of the Property, on 28 May 2020. Mr Wright suspected that the complainant was a former occupant with a difficult social background who had assaulted him in the spring / summer of 2020, and who had been prosecuted and convicted for that offence. Mr Carpenter did not (quite properly) disclose the identity of the complainant. It is possible that the complainant had malign intent, but that is not a matter for the Tribunal, nor do we level any criticism upon the Council for following it up.
67. As a result of the complaint, Mr Carpenter decided to carry out a further inspection. Notice was given to Mr Wright by letter dated 6 June 2020 of an inspection to be carried out on 17 June 2020. The letter does not refer to any statutory authority for the inspection and the reason for inspection is stated to be “the Council has received a complaint concerning the conditions at the above property and a further inspection is required”. Mr Wright responded to remind the Council that residents at the Property included some with challenging behaviour and some with health conditions which made them particularly vulnerable to Covid.
68. The inspection proceeded on 17 June 2020. It was carried out by two Environmental Health Officers from Ashfield District Council one of whom, Ms Stacey White, gave evidence to us at the hearing. Mr Carpenter explained that Ashfield DC EHOs had been asked to help because of capacity issues within his team caused partly by the pandemic. He attended the inspection himself with another EHO from the Council. In

addition, the Council arranged attendance by an independent private sector electrician.

69. Following the inspection, the Ashfield District Council EHOs prepared a report, a copy of which was provided to the Tribunal. The purpose of the inspection was to consider the condition of the Property. It is, however, a 29-page report focussing almost exclusively on whether there has been compliance with the Management of Houses in Multiple Occupation (England) Regulations 2006, and with the terms of Mr Wright's licence. Breaches of both the Regulations and the licence were said to exist, which are disputed by Mr Wright. Such issues are not a matter for us except in as much as they evidence the existence of hazards under the HHSRS.
70. The only content in the report directly relating to an HHSRS inspection is a reference in the "overview" section in which it is stated that "a number of category 1 and high category 2 hazards were identified posing a high risk to both occupants and visitors to the property". Those hazards were not further identified.
71. In the description of the property section of the report, the authors have stated:

"[The Council] have received numerous complaints mostly from neighbours over past 4 years relating to ASB, safeguarding, condition and use of property, pests, noise, parking, accumulations and use of mobile dwellings."
72. The Council decided to issue the Order as a result of the inspection on 17 June 2020. It is dated 9 July 2020. It "prohibits the use of the HMO as a residential or commercial premise and for all other purposes, except by Mr Michael J Wright and his immediate family."
73. Five category 1 hazards are identified in the Order. No HHSRS scores are given in the Order but at the hearing Ms White provided us with her calculations both in relation to the inspection on 17 June 2020 and also in respect of a further inspection on 19 January 2021 (see below). The five hazards in the Order are set out below. Specific deficiencies were listed in relation to each hazard (in compliance with section 13(2)(c) of the Act). The number of deficiencies is recorded below:
 - a. Electrical hazards (score 17,172) – 18 deficiencies
 - b. Fire (score 7,060) – 13 deficiencies
 - c. Personal hygiene, sanitation and drainage (score 4,706) – 7 deficiencies
 - d. Excess Cold (score 5,847) – 5 deficiencies
 - e. Domestic hygiene, Pests and Refuse (score 1,216) – 6 deficiencies
74. The detail of each deficiency is listed in the Appendix to this decision. At the hearing, the Council accepted that some of the deficiencies had been

remedied. These are shown in grey in the Appendix. If remedied, in this decision we have not made further reference to all the remedial work initially set out by the Council in the Order.

75. Remedial work required is set out in the Order. The requirements are not set out in full but are briefly summarised as follows:

Electrical hazards

- a. Further inspection and testing by a qualified electrician is required of all the “newly installed or recent additions to the wiring and circuits”
- b. Redundant wiring switches and circuits to be removed
- c. Large domestic fridge outside back door to be relocated

Fire

- d. Doors to bedrooms, kitchens, and communal areas to be removed and replaced with FD30s fire doors
- e. Walls and ceilings between lettings to be 30 minute fire resistant
- f. Remove obstructions to fire escape routes and all portable heaters
- g. Requirements in relation to the fire protection system and the emergency lighting system including ensuring alarm was set to adequate volume (there are 6 remedial action requirements set out relating to these issues – see Appendix)
- h. Install directional safety signs
- i. Provide first floor window escape route – as per a specification set out

Personal hygiene, sanitation and drainage

- j. Install an additional WC and wash-handbasin
- k. Provide new impervious surfaces to all bathrooms

Excess Cold

- l. Replace and make weatherproof the windows to the sides and rear of the Property
- m. Replace the external doors to the front side and rear of the Property

Domestic hygiene, Pests and Refuse

- n. New surface to the kitchen floor required
- o. Undertake treatment to eradicate vermin
- p. Reduce means of access into the Property by pests
- q. Ensure gardens and outbuildings are free of food waste and other materials that could harbour vermin

76. The operative date in the Order was 6 August 2020.

77. The section 8 statement of reasons explained the selection of a Prohibition Order as follows:

“The effect of making a Prohibition Order is to prohibit the use of all or part of the premises for some or all purposes or occupation by particular people because the conditions present a serious threat to health or safety. Remedial works can be undertaken which the authority will consider will reduce the hazards to an acceptable level and when completed will allow the Prohibition Order to be revoked. These are contained in the attached schedule to the Prohibition Order.

In this property there are several category 1 hazards and the improvement notice served on 1 August 2019 has not expired. The property has deteriorated further since that time and although some works for the notice have been complied with, the works that have been carried out are of a poor standard. The scale of occupation increases the hazards considerably and makes it difficult to carry out the necessary extensive works e.g., to the floors and ceilings to reduce the hazards to an acceptable level at a reasonable cost. Some of the residents are vulnerable and have said that the disrepair and conditions within the property are detrimental to their health and wellbeing.”

78. At the same time as making the Order, the Council revoked the Improvement Notice issued in 2019.
79. As mentioned above, the Council had requested the attendance of a private sector electrician at the 17 June inspection. That firm provided a report to the Council dated 1 July 2020. There are 19 specific issues identified, many of which are merely observations, and most of which would be easily remediable. The report concludes that “the installation is in a fairly poor condition and there are quite a few issues that we deemed to be a safety hazard”.
80. Mr Wright was “shocked and saddened” at the making of the Order and he wrote to Mr Carpenter on 24 July 2020 making various points including that he had provided an EICR in 2017, that certificates for the fire and emergency lighting systems had been provided to him in December 2019 (which Mr Carpenter had acknowledged), that if there were inadequate bathrooms, that should have been picked up on licensing the Property in 2017, that a number of the requirements were vague, and that no account seemed to have been taken of the significant work which had been carried out following the service of the Improvement Notice. He said that he was committed to making all necessary improvements to ensure the continued safe operation of the Property and he offered to meet with Mr Carpenter. He requested “variations” to some of the requirements set out in the Order, though in reality what his letter did was explain why he disagreed with some of the deficiencies identified and the remedial works required. We read the letter as implying that he was requesting that

Mr Carpenter considered again whether some of the requirements in the Order were reasonable.

81. In relation to the requirement to install an additional WC and wash-handbasin, Mr Wright provided evidence of the requirements that he had been notified of by Ms Frain when he licensed the Property which confirmed that only 4 bathrooms were required.
82. Mr Carpenter's reply on 3 August 2020 gave no ground. He insisted that the Order was clear and that it had to be complied with. He reminded Mr Wright that he would need to appeal if he objected to the Order. Mr Wright duly did so by an application dated 5 August 2020.
83. Also on 5 August, Mr Wright sought further clarification on the content of the Order. It is not necessary to set out the full detail, but an example will illustrate what Mr Wright was wrestling with at this point. He asked what the Council had in mind when requiring a new EICR in relation to "newly installed or recent additions" to the electrical circuits. The letter clearly implied that he was unsure exactly what would satisfy the Council in respect of the eight questions he raised in that letter. We have not been provided with a copy of any reply to this letter.
84. Between the launching of the appeal and the hearing, Mr Wright says he continued to do works at the Property to comply with the Order. In particular he says that:
 - a. He commissioned and provided an EICR dated 24 September 2020 (copy in the Tribunal bundle). This records the electrical installation as "satisfactory" with no immediate action required;
 - b. Redundant wiring has been removed from the frontage of the Property, as have redundant wires to outbuildings and caravans;
 - c. The refrigerator has been removed;
 - d. Ceilings have been inspected to ensure they are 30-minute fire resistant. The ceiling barrier between Room 1 and Room 6 was considered inadequate so Mr Wright has installed close fitting hardboard to the floor of Room 6;
 - e. Similarly, some further hardboard protection to the floor of Room 5 was installed as it is said there is inadequate protection between this room and room 11 below; [note: the plans with which the Tribunal is working do not show Room 5 to be above Room 11]
 - f. Walls between Rooms 3, 5, and 9 on the first floor and Rooms 6 and 7 on the second floor were of lath and plaster construction. They have been replaced with new stud partitions and plasterboard with acoustic insulation inserted so they now provide 30-minute fire

protection [note – as Room 4 is between Rooms 3 and 5, it also must by implication be said by Mr Wright to be 30-minute fire protected from the adjoining rooms];

- g. Obstructions have been removed from all fire escape corridors;
 - h. New directional safety signage has been installed;
 - i. An escape window has been installed on the first-floor landing;
 - j. There was already a switched fuse connection to the fire alarm panel;
 - k. Flooring in all bathrooms has been replaced;
 - l. A BTU assessment has been carried out by a Gas Safe Engineer and upon his recommendation new radiators have been installed in 3 and 9 and in the ground floor hallway. A BTU calculation has been provided to the Tribunal which indicates that all other rooms are adequately heated;
 - m. Broken windows panes have been replaced as has the window frame in Room 7. All window frames to the north elevation have been re-puttied and treated with Cuprinol wood preserver. The window in Room 10 (unoccupied) is under repair and the Room will remain unoccupied until the repair is completed;
 - n. The roof space above the second-floor kitchen has been insulated;
 - o. New flooring has been provided to the second-floor kitchen;
 - p. External and internal bait boxes and mouse traps have been laid, though no vermin have been caught;
 - q. Gardens and outbuildings have been cleared of waste materials; and
 - r. There are six general waste and six recycling bins available for occupants at the Property.
85. On 8 December 2020, the Council carried out a further visit to the Property in order to prepare the Scott Schedule. They instructed an electrician (EWS Electrical) to attend at the same time.

The hearing

86. We explained above that we considered this case required an oral hearing and an inspection. As it became clear at the end of 2020 that an inspection was not going to be possible, we invited the Council to carry out their own further inspection, which they did on 19 January 2021. We were provided with some 20 video clips of the inspection and a suite of photographs

which showed the condition of the Property at the 17 June 2020, compared with its condition on 19 January 2021.

87. It was common ground, and expressly stated at the beginning of the hearing, that the Tribunal's task was to assess the condition of the Property as at the date of the hearing in order to then decide, by way of rehearing, what was the most appropriate enforcement method assuming we took the view that any hazards continued at the Property.
88. The documents available to the Tribunal at the hearing comprised hearing bundles from both parties with statements of case and ancillary documents. Additional documentation provided to the Tribunal included a Scott Schedule identifying each deficiency with the parties comments on that deficiency, a suite of photographs produced by the Council, the videos of the inspection visit dated 19 January 2021, an undated questionnaire from ESW Electrical commenting on the continued existence of the alleged electrical defects (created electronically on 11 December 2020 and being part of the Respondent's contribution to the Scott Schedule), and for the March hearing days, two documents giving the Council's HHSRS scorings following the inspections on 26 June 2020 and the 19 January 2021, and a document from the Applicant with comments on the 19 January 2021 scoring report.
89. The Tribunal requested that the Council give its evidence first, as our task required us firstly to understand the difficulties the Council had with the Property.
90. Ms Stacey White gave evidence to confirm that she had inspected the Property on 17 June 2020 and had identified a number of defects, leading her to conclude that five category 1 hazards existed. The deficiencies had been identified in the Order. She confirmed that she had re-inspected on 19 January 2021 and she did not regard such work as had been carried out by Mr Wright as satisfying the requirements of the Order. In her evidence she went through each photograph in the suite of photographs taken on 19 January 2021 and explained the reason for saying the deficiency it related to had been identified as a deficiency in June 2020, had not been resolved since. We deal with her points and our conclusion in relation to each deficiency in the Appendix to this decision.
91. Ms White concluded that in her experience the condition of the Property in June 2020 was such that a Prohibition Order was the appropriate enforcement action. We had asked Ms White to provide us with the HHSRS scores from the June 2020 inspection and to re-score the hazards in January 2021 for comparison purposes. She / the Council did accept that some of the deficiencies had now been resolved. The number of deficiencies put forward in the Council's case at the hearing are recorded below. As stated above, the deficiencies no longer relied upon are shown in the Appendix in grey. Ms White's January scores (with the June 2020 scores for comparison) were:

Hazard	June 2020 score (deficiencies)	January 2021 score (deficiencies)
Electrical hazards	17,172 (18)	17,172 (15)
Fire	7,060 (13)	12,558 (10)
Personal hygiene	4,706 (7)	941 (2)
Excess Cold	5,847 (5)	18,192 (2)
Domestic hygiene	1'216 (6)	733 (5)

92. The increase in the score for excess cold arose because the likelihood score was increased from 1:56 in June 2020 to 1:18 in January 2021, regard being given to the time of year of the second score and an increase in the number of tenants in the vulnerable group. The increase in the score for Fire was because the class 2 outcome was increased from 1.000008 to 2.2.
93. The Tribunal gave its view that neither of the reasons for a change in the excess cold score were valid; the statutory Operating Guidance makes it clear that an assessment should, in any case, assess the likelihood of a harmful occurrence over a twelve-month period, and also that assessments are made disregarding current occupiers (if any).
94. Mr Carpenter also gave evidence. As the head of the Council's Environmental Health function, he said he had not been directly involved in the detailed inspections in June 2019, June 2020, or January 2021, though he was present at the last of these. He mainly addressed the reasoning behind the decision to issue the Order. He said that he had made the decision to serve the Order on the basis:
- That there was a serious threat to the health and safety of the occupants of the Property
 - The tenants are vulnerable people
 - The Property had deteriorated since 2019
 - The Ashfield officers had recommended this course of action
 - The previous enforcement action had not succeeded
95. Mr Carpenter was asked about the HHSRS scores calculated by Ms White. He said that he was not informed of the scores and he had not seen the calculations prior to them being put into evidence at the hearing. He had carefully considered the Ashfield report when making his decision to issue the Order. He was persuaded by it and stood by the decision at the hearing having taken into account the work that Mr Wright had undertaken between June 2020 and the hearing. In cross-examination it was put to him that he had approached the report uncritically and had not considered whether the alleged breaches of Management Regulations and licence conditions stood up to scrutiny. He accepted that if that turned out to be

the case then hypothetically, he might have taken a different course, but in fact he actually agreed with the report and its recommendations.

96. His principal concern was that Mr Wright firstly avoided interactions, preferring to communicate through his friends, so it was difficult to establish a meaningful relationship with him, and secondly that Mr Wright tended to work haphazardly, and the quality of his work is often not as good as it should be; at best his remedial works only just met the required standard to comply with the Council's requirements.
97. Regarding the 5 December 2019 inspection, Mr Carpenter confirmed that his main concerns from the Improvement Notice had been complied with. There remained some other out-lying non-compliance issues, but they were of a minor nature.
98. On re-examination, Mr Carpenter said that action against Mr Wright had been considered in the department and draft documents had been produced, but he accepted that no action had in fact been taken regarding any alleged failure to comply with the Improvement Notice.
99. Mr Carpenter stood by the making of the Order and asked the Tribunal to uphold it.
100. In fact, Mr Carpenter was away when the Order itself was made, and uncontested evidence was provided that it had been formally authorised and signed by the next most senior member of the Department, Mr David Banks.
101. A statement from the second member of the Ashfield District Council team who had carried out the inspection on 17 June 2020, Mrs Sarah Atherton was accepted into evidence as read. Her statement broadly confirmed the information provided by Ms White.
102. The Applicant's case was presented by Mr Linley. He called four witnesses whose evidence had been set out in witness statements, namely Mr Dunnill, Ms Birtchnell, Dr Hebblethwaite, and Ms Cumming. Mr Paget did not wish to cross-examine these witnesses and their evidence was taken as read.
103. The evidence from the four witnesses referred to has common themes. All the witnesses have personal knowledge of Mr Wright and they give glowing testimonies of his character and the high value of the provision of friendship and support that is provided at the Property. That the occupants of the Property can sometimes be challenging individuals is accepted. But Mr Wright's non-judgemental, plain-speaking, and caring attitude is commended by all. Ms Cumming is a former social worker; Dr Hebblethwaite is the pastor of a local Baptist Church. Ms Birtchnell has a relative at the Property with some challenging needs and is quite sure that Mr Wright is filling a void in social care that local Mental Health Services

ought to be filling but are not. Mr Dunning is a former resident who lived at the Property for 4 years and regards the support he received there from Mr Wright as highly instrumental in his recovery from difficult personal circumstances. All with personal knowledge of the Property also deny any suggestion that it is cold, or that there is inadequate hot water.

104. Mr Wright gave evidence. After explaining the history of the Property (see above), he confirmed that in early 2019 he had found it was difficult to get on with Mr Baker who had been critical of the standards of cleanliness at the Property. He acknowledged that relations with the Council had not been good in 2019 and he felt they had not been helpful in communicating with him. Nevertheless, he was adamant that he did all he could to comply with the Improvement Notice, including spending some £7,000 in the works he had undertaken.
105. Mr Wright gave his account of the meeting in December 2019 to review compliance with the Improvement Notice. So far as he could see, Mr Carpenter had appeared pleased with the work that had been done and he had left happy.
106. Nothing had then happened regarding the state of the Property until May 2020 when Mr Wright had been assaulted by a former lodger with mental health problems, who Mr Wright said had been convicted by the Courts as a result. That interaction had resulted in the course of events described above that led to the issue of the Order.
107. Mr Linley then took Mr Wright through each of the deficiencies listed on the Order. Some of the detail is given in the Appendix to this decision, as are general comments on each deficiency by the Tribunal. In broad terms, Mr Wright is of the view that each deficiency has either been overblown, or has been remedied.
108. In his closing submissions, Mr Paget said the evidence showed that Mr Wright was begrudging in his attitude to compliance with regulatory requirements and the standard of work he undertook was not satisfactory. He had failed to comply with the Improvement Notice – for example, the bedroom doors had not been replaced as required. There were many factual disputes regarding the deficiencies but Ms White’s evidence, as an experienced EHO should be preferred. Mr Wright had failed to provide corroborative evidence of his compliance with the Order as he easily could have done. The Property still had significant deficiencies which posed a risk to the health of the occupants. A Prohibition Order was as justified now as it was in June 2020 and it should be upheld.
109. Mr Linley, in his closing speech, stressed that the evidence showed a continuing commitment by Mr Wright to improve the Property over at least the last four years. Improvements had been made when the Property was licensed (in particular work on the doors and the installation of a fire alarm), following the Improvement Notice, and since the issue of the

Order. The evidence did not support the claim that the Property was unsafe. There were reasonable grounds for believing that the Council were intent on closing the Property because it was not favoured by local residents. He pointed out the social utility of the Property and the valuable support that Mr Wright gave to vulnerable adults. He urged that the Tribunal should quash the Order.

Discussion

110. Our task is to determine, should we be persuaded that hazards exist at the Property, the most appropriate enforcement action to take. The Council decided to issue a Prohibition Order. On appeal we have to decide, on a rehearing, what enforcement action we think should be taken. We should attach weight to the Council's conclusion. We should make the decision as at the date of our decision and so in the circumstances that pertain now, rather than as if we are remaking the decision on the date it was made.
111. Our decision should be taken following, and as a result of the findings of, an assessment of whether any category 1 or category 2 hazards exist at the Property under section 4 of the Act.
112. In our view there are certain aspects to this case that are not relevant to our determination because they do not relate to the existence or otherwise of hazards as defined. We do not think we should take into account:
 - a. The utility or otherwise of the way in which Mr Wright uses the Property. We do not doubt at all the evidence provided by the four character witnesses. We acknowledge that the provision of accommodation for people who may otherwise fall into a gap in social provision may well be of benefit;
 - b. The allegations that the Council has a malign attitude to Mr Wright, or that it is intentionally trying to close the Property down to satisfy local residents;
 - c. The allegations that Mr Wright is in breach of management regulations or the terms of his licence and his denials of these allegations;
 - d. The reasoning behind the Council's decision to re-inspect in June 2020. The Council have statutory duties if a matter of concern is brought to their attention, whatever motivates a complaint.
113. However, in identifying "appropriateness" of an enforcement action, we do think it is relevant to consider previous interactions between Mr Wright and the Council in so far as they relate to enforcement of housing standards under the Act. There are a number of features of this case that we think are relevant, these being:

- a. The proximity between the dates of the Improvement Notice and the making of the Order. It has been a theme of the Council's case that the Property deteriorated to a significant degree between these two dates, so a new situation existed in June 2020. We do not think this deterioration is borne out by the evidence we have seen. The Tribunal notes that the personnel who conducted the inspections in 2019 and 2020 were different personnel and that hazards which were presumably in existence at the time of the original Improvement Notice were not included within it and so it would appear difficult to make an objective comparison. Furthermore, some remedial works had been carried out in particular the installation of an extensive automatic fire detection system which appears to be of high quality. The claim has been asserted rather than proved in our view;
- b. That the Council took the view in 2019 that a Prohibition Order was not the appropriate enforcement action to take following the inspection on 19 June 2019. We do not follow the argument for adopting a different enforcement method in 2020. In so far as Mr Carpenter advanced the argument that one of the reasons a Prohibition Order was appropriate was because the Improvement Notice had not succeeded, we do not consider that failure to comply with an Improvement Notice is most obviously corrected by issuing a Prohibition Notice instead. The more obviously correct approach in our view would be to enforce the Improvement Notice;
- c. The inspection on 5 December 2019 to establish whether the Improvement Notice had been complied with. We find that Mr Carpenter was generally satisfied with the outcome of that inspection, though he thought there were some issues of non-compliance. That was his evidence;
- d. The Council's failure to follow up the December inspection at all – even to correspond with Mr Wright. This is perplexing. If the Council thought the Improvement Notice response still left the occupants of the Property at risk, they had the option of taking enforcement action and/or carrying out works in default. Their failure to take any action is suggestive of an acceptance that the work Mr Wright had actually done (acknowledged in the note of the meeting) was adequate to allow them to leave the matter as it was without any further action being taken;
- e. The focus of the Ashfield report which was primarily on compliance with licence conditions and the Management Regulations rather than assessment under Part 1 of the 2004 Act. The explanation put forward for carrying out the inspection was straightforward; a complaint had been received which the Council were under a duty to investigate. An inspection under section 4 of the 2004 Act was justified, but in fact the scope of the inspection clearly expanded significantly to include a full investigation into other compliance

issues. The Council's evidence did not properly explain this or if any action was taken in respect of the breaches identified;

- f. Approval of the decision to make the Order following the receipt of the Ashfield report. We were surprised to learn that Mr Carpenter had not been aware of the HHSRS scores at the point of deciding to issue the Order, and so had not been supplied with some crucial information which could reasonably have been expected to be taken into account when making his decision on the Order. We have also noted that the Ashfield report focusses very much on alleged breaches of management regulations and licence conditions rather than matters relating to the condition of the Property which are relevant factors when assessing HHSRS hazards. Although the report recommends the making of a Prohibition Order, there is no rationale contained within it to explain why that enforcement action was considered to be the most appropriate action. We are not persuaded that reliance on the report alone justified the making of the Order;
- g. We are of the view that the re-scoring of the hazards in January 2021 contained some errors (as discussed at paragraph 93). In addition, whilst scoring under the HHSRS is not a precise science, it does appear to the Tribunal having regard to its own experience and worked examples that the scores for excess cold and electrical hazard do err on the high side.

- 114. We now turn to the decision to make a Prohibition Order rather than take any other enforcement action.
- 115. A Prohibition Order is a draconian step. The Enforcement Guidance clarifies that factors that should influence the decision to make a Prohibition Order can properly include a situation where the conditions pose a serious threat to health and safety, but remedial action is considered unreasonable or impractical for cost or other reason, including impracticality of work being carried out whilst an occupier is in residence. None of the other circumstances set out in paragraph 5.21 of the Guidance for use of a Prohibition Order seem to apply to this case, in our view.
- 116. We address each of the five hazards to consider whether they pose a serious threat to health and if so, what practical steps could be taken to remedy them:

Electrical hazard

- a. Our first consideration is the extent to which electrical hazards exist. We ask that readers consult the Appendix for our views on each specific deficiency, but we make some general comments here. It is clear that the electrical installation has 'evolved' to a degree over a period of time and Mr Wright acknowledged that he himself (not a qualified electrician albeit with some knowledge and experience of

electrical work) had carried out much of the work. It was also clear that previously there were deficiencies presenting a significant hazard but there the evidence presented does indicate that risk has now been mitigated.

- b. We were not assisted at all by the Council's electrical report dated 1 July 2020. Allegations regarding "poor condition" or "unsatisfactory" are much too vague to be much help in justifying the necessity to close the Property or identifying what works are required to reduce the hazard to an acceptable level.
- c. In any event, Mr Wright would appear to have substantially complied with the remedial action required by providing the EICR in September 2020.
- d. We consider that any electrical hazards that remain at the Property could be remedied in practice without requiring the occupants to vacate the Property.

Fire hazard

- e. There is no evidence to support a suggestion that any fire risk at the Property attributable to property condition had increased from December 2019 to June 2020. The evidence is rather that Mr Wright had continued to make improvements to the structural compartmentalisation arrangements during this time, and indeed afterwards.
- f. Mr Carpenter inspected the Property in December 2019 and raised no issues regarding fire safety thereafter. The Order required virtually identical remedial work to the Improvement Notice. Mr Wright did not fully comply with all the requirements of the Improvement Notice, but the Council clearly did not regard this failure as a situation that exposed the occupants of the Property to a serious threat to their health from December 2019 until June 2020 and we cannot see why the risk had suddenly become so urgent in June 2020 that occupants should leave until works had been carried out.
- g. Prior to the Improvement Notice, Mr Wright had clearly carried out some fire protection works in consultation with the licensing officer, and a new, good quality Grade A LD2 system was then installed in November 2019. The issue that remains is that we and the Council cannot yet have confidence that the works Mr Wright has carried out provide entirely secure 30-minute fire protection compartments and we think that further inspections, professional advice, and enforcement of properly specified works is needed. In our experience, these sort of works are often specified in Improvement Notices rather than Prohibition Orders and we cannot see that a

Prohibition Order is necessary in this case because of the residual concern about doors and adequacy of structural protection. The automatic fire detection together with other work undertaken indicates that there is no imminent risk of serious harm, as we believe Mr Carpenter accepted in 2019, subject of course to competent property management by Mr Wright being in place to ensure risk from the conduct of occupiers is kept to an absolute minimum.

Personal hygiene and Domestic hygiene

- h. We consider these two hazards together. Both are now scored as Category 2 hazards by the Council. We do not say that no further attention to these hazards is necessary, but we do consider that it would be disproportionate to impose a Prohibition Order to enforce any remedial action required. The risk of harm is not serious from these hazards.

Excess Cold

- i. The Council's residual concern about this hazard is that the windows and doors are poorly maintained. Their concerns about the heating system and insulation have been allayed. We find that the risk that remains does not pose a serious risk of harm and/or that any remedial work required to reduce the hazard could be undertaken whilst the occupants are at the Property, although it may be said that the evidence suggests that the boiler is nearing the end of its serviceable life.
117. Our conclusion from the above discussion is that a Prohibition Order is not the most appropriate enforcement action in the light of the evidence about the hazards at the Property that have been the subject of this case and the statutory guidance. In our view it is disproportionate. We consider that it was not necessary for occupants to vacate the Property in order for remedial works to be carried out. Our decision is therefore that we quash the Order.
118. This determination is as far as we can go in relation to our powers in paragraph 11 of Part 3 of Schedule 2 of the Act. We do wish however to add some thoughts about the next step in the hope that this assists both parties.
119. A review of the Appendix to this decision, in which we have set out our comments on each of the deficiencies identified by the Council, will show that in general terms we do not consider the Property yet justifies a clean bill of health; indeed, it is some way from doing so. In our view, the Council would be justified in conducting a further inspection with a view to assessing the Property again under the HHSRS system. If the Council do so, we trust that they will be aware that there is a perception on the part of Mr Wright that the Council is motivated by factors which should not

play a part in assessing the safety of the Property. We did not seek to resolve this perception in this case, nor in our view should we have attempted to do so. Any further inspection will obviously need to be (as all inspections should be) scrupulously fair and objective. In our view, any hazards identified in any further inspection (absent of substantial deterioration or new defects being apparent) could most probably be dealt with by an Improvement Notice.

120. By the same token, we do urge Mr Wright to set aside his issues concerning the Council's motivation. He should seek a co-operative relationship with the Council. The value of the service which he offers to his occupants is not relevant to the quality of the accommodation which they are entitled to expect. The purpose of the Act is to ensure that whenever accommodation is offered to others, it is safe and up to modern standards.
121. In this case there are significant disputes between Mr Wright and the Council concerning the quality of work carried out at the Property. We think that if Mr Wright wishes to undertake work himself, he should realise that he may have to defend its quality. That is best done by inspection and certification by independent qualified personnel. Perhaps Mr Wright could find an appropriate qualified professional who may either be able to assist him with quality control or assist him in rebutting allegations of poor workmanship by the Council. The evidence of such a person may also assist any Tribunal should it ever be necessary to bring proceedings in the future.
122. The hazard of the greatest residual concern to the Tribunal is the fire hazard, and the element that still undoubtedly justifies further investigation is the structural compartmentalisation issue together with the adequacy of the internal doors. Mr Wright should understand that in exercising its statutory obligations, the Council (and indeed any Tribunal considering this issue in the future) would be unlikely to be convinced of the adequacy of the work already undertaken without independent professional evidence of its quality. We have no power to compel Mr Wright to do anything, nor can we be his advisers. But we think the Council need comfort that the existing arrangements are fully compliant, to all appropriate professional standards, in providing adequate 30-minute fire protection to the escape routes. We think this comfort is only likely to be available via an appropriate independent professional skilled in advising on fire protection.

Appeal

123. 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.

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

APPENDIX

PARK LANE FARM - SCHEDULE OF DEFICIENCIES WITH TRIBUNAL COMMENTS

In attaching these comments, the Tribunal reiterates that, whilst this is an appeal by way of rehearing and accordingly the task of the Tribunal is to make its own decision as to the most appropriate course of enforcement action, it was not possible to undertake an inspection of the property as would be usual practice with such appeals. The comments below in respect of deficiencies at the property are made solely on the basis of consideration of evidence produced during the hearing.

Deficiency and Hazard	Tribunal's comments
<p>Electrical Hazards</p> <p>The main consumer unit is not to current regulations and in addition the consumer unit and associated wiring is also obstructed by personal possessions.</p>	<p>Personal possessions appear to have been cleared by 19 January 2021. This consumer unit has a plastic enclosure which is not non combustible as required by the 18th edition of the IET Wiring Regulations. The December 2020 report by ESW Electrical also refers to holes affecting the IP rating and to the fact that some MCBs are not of the same make as the consumer unit itself. The 24 September 2020 report by MLW Services notes that the enclosure is of non-ferrous material but records this a Code 3 item. The introduction of a requirement for non-combustible enclosure that postdates the installation of a consumer unit does not of itself require that the consumer unit be changed until it is necessary to replace the consumer unit for other reasons. For this reason, the Tribunal would require a clear justification for the inclusion of a requirement to replace the consumer unit in any future required remedial action. It is not possible to comment on the MCBs of a different manufacturer as no evidence on this point was made available to the Tribunal.</p>
<p>There is evidence of unauthorised adaptations and alterations to the installation with no records of previous testing or competent installation.</p>	<p>The Council did not identify what they meant by “unauthorised adaptations and alterations” notwithstanding the fact that they produced two general electrical reports commissioned by themselves. Mr Wright accepts that he has carried out a number of works to the electrical installation himself but maintains that he was entitled to do so prior to the introduction of Part P of the Building Regulations and also that because of previous experience he was competent to do</p>

	<p>so. Photographs do show significant evidence of wiring executed in a haphazard manner which would not normally be associated with professional installation. Any future deficiency / remedial action identified should specify the technical breach and be precise about the action required</p>
<p>There are circuits with cables buried less than 50mm above the consumer unit on the first floor.</p>	<p>The Council does not clarify why this is a concern as it is understood that the IET regulations permit this subject to suitable RCD protection. Mr Wright's evidence is that the electrical box on the first floor (photo 29 p53) is not a consumer unit (it was an earlier distribution board of metal construction) but in effect a junction box. A photograph of the open box shows a modern plastic junction box. Terminal block connectors have been used to join single conductors within this metal enclosure.</p>
<p>There is an inadequate number of sockets to each living space leading to the excessive use of extension leads and adaptors in the main house.</p>	<p>Photographic evidence of extensive use of extension leads was produced but the numbers and positions of such leads was not evidenced nor were the number of socket outlets in each room. Mr Wright maintains that there are a minimum of four socket outlets in all but two rooms. The HHSRS does not stipulate specific numbers of socket outlets per room but simply gives a reference to 'inadequate number of sockets' as a relevant factor when assessing hazards but inadequacy should be evidenced.</p>
<p>There are circuits with cables buried less than 50mm above the consumer unit on the ground floor.</p>	<p>The Council does not clarify why this is a concern as it is understood that the IET regulations permit this subject to suitable RCD protection</p>
<p>There is a socket directly above the sink in the kitchen.</p>	<p>The Council accept this has been resolved</p>
<p>There is a junction box located within zone 0 in the first-floor bathroom</p>	<p>Zone 0 means within an actual shower tray or bath itself and there was no evidence of this. The December 2020 ESW report says that no socket outlet found 'after looking'.</p>
<p>There is a junction box located within zone C within the sauna</p>	<p>There is no 'zone C' in the IET regulations. It is presumed this is a reference to Zone 3. Mr Wright maintains that the junction box is a low voltage thermistor. The December 2020 ESW report refers to the junction box that 'looks like' it is connected to the alarm system. Any future deficiency / remedial action identified should specify the technical</p>

	breach and be precise about the action required
There is a socket with no face plate within room 9	It appears this refers to a socket outlet in the second-floor kitchen. The appearance of the cable suggests it is data cable or similar. Nothing of concern was noted in the December 2020 ESW report – indeed the author of that report said he would say the problem has been rectified.
There is an external plug socket located adjacent to the sauna that is not adequately protected from the elements. The Sauna controls have been installed very poorly and do not have the required IP safety rating.	Mr Wright maintains that the sauna controls are now located in a box rated at IP66. The December 2020 ESW report refers to other concerns with the absence of stuffing glands where cables enter socket outlets and the IP rating being affected by the unit lid not being able to close effectively.
There is an external plug socket located on the outbuildings at the rear of the property not adequately protected from the elements.	The December 2020 ESW report refers to a missing clip to the external socket lid and a cable running to a 16A commando socket with inadequate protection from mechanical/UV damage.
The cables to the outside lights are trailing and loose and have no covers to provide protection.	The December 2020 ESW report maintains that this is still the case.
There are large holes in the fuse board casing.	It is assumed this a reference to the consumer unit on the second floor. The Council accepts that the openings to the head of the consumer unit have been boxed in. The clear Perspex cover that normally sits over the MCBs and RCDs is missing. A hole referred to in the evidence appears to be the seating of the missing Perspex cover but has been slightly enlarged.
There are a significant number of unidentified and untraced electrical wires which cannot be determined as being safe.	The photographs do indicate an electrical installation that might be described at best as haphazard with numerous ad hoc additions. The Council evidence is not clear as to what cabling is unidentified and why it may be unsafe, and the December 2020 ESW report indicates that more time would be needed to investigate this. Notwithstanding the fact that in total two EICRs and two general electrical reports have been produced, the Tribunal is of the view that systematic, detailed, and thorough examination and testing of the electrical installation should be carried out.
There is the use of internal grade extension cables externally and open	There is conflicting evidence on this point. It does seem clear that the use of such cables to the caravans has ceased; however, the

to the elements within the open outbuildings and mobile dwellings.	December 2020 ESW report maintains that such cable still run across the driveway.
There is no evidence that portable electrical appliances within the property have been recently PAT tested	The Council accept this has been resolved
The light fittings in the communal bathrooms are not sealed units and are inadequate for use in a bathroom of this size.	The Council evidence on this point is lacking in detail. There is no clear reference to zoning, the apparent IP rating of light fittings or indeed the voltage of the fittings. Any future deficiency / remedial action identified should specify the technical breach and be precise about the action required
There is a large domestic fridge plugged in externally adjacent to the back door of the main house with a risk of electrocution.	The Council accept this has been resolved
Fire	
The fire doors, associated sets and self-closers are in poor condition, the damage to these and the poor installation of the doors and sets leads to a reduced integrity and a lack of adequate protection from smoke and fire.	There are panelled doors to the majority of the Property which are said to be original (the doors to the flats in the rear annexe appear to be framed, ledged and braced). There are two types of panelled door, with those to the former servants' quarters of less substantial construction. Mr Wright maintains that he has carried out extensive works to the doors which were agreed with a Council officer formerly responsible for the Property. He states that he has treated them with an intumescent paint supplied by Envirograf, a specialist manufacturer, inserted intumescent strips/smoke seals, fitted fire rated door furniture including self-closing devices and filled holes/gaps with specialist intumescent materials. The Council maintain that the doors and casings are in poor condition and damaged in part and do not meet the specification for FD30S. It is clear to the Tribunal that the internal doors should meet the requirements for an FD30S door set given the nature, size and use of the Property. Envirograf is a recognised supplier of fire-resistant products for use in period properties and it is understood that it is possible for there to be independent verification that use of their products along with related works has led to a particular door meeting the requirements

	for FD30S although this probably involves destructive testing. There has been no independent certification of the works done here and either this should be obtained or FD30S door sets should be fitted.
There are a number of obstructions on the ground floor corridor, first floor corridor and stairway leading from first floor to second floor	The issue of obstructions in corridors in any premises can change daily but the Tribunal was satisfied that the evidence available showed that this deficiency has been substantially resolved. Clearly the Council should check that there has been no regression in future inspections.
There is inadequate heating and use of portable non PAT tested heaters as a result.	The Council accept this has been resolved
A number of bedrooms have their own refrigerators, cookers, microwaves and kettles with no adequate additional protection from fire.	The Council accept this has been resolved
There is no certification for the AFD (automatic fire detection) installation or testing and on sounding of the alarms optimum decibel (dB) levels were not achieved. In addition for the detection in place is not adequate for a property of this size, taking in to consideration the convoluted means of escape, the lack of secondary means of escape, the number of occupiers in the property and additional known vulnerabilities of tenants.	Mr Wright did provide certification along with evidence that this was emailed to Mr Carpenter and acknowledged by him. The Council has not provided evidence that required decibel levels are not achieved. From the evidence provided, the Tribunal notes that the automatic fire detection system is extensive and appears to meet the recommendations given in independent such as that provided by <i>LACORS Guidance on fire safety provisions for certain types of existing housing</i> . The Council assert that the automatic fire detection system is inadequate but do not specify in what regard it is inadequate other than in references to broad factors such as property size, escape route and the occupiers. They do state that ideally there should be, in addition, standalone alarms in each of the bedrooms but this is usual only where cooking take place in the rooms rather than in communal kitchens. It is understood that the automatic fire detection allows for staged alerts where interlinked detector households sound in the immediate vicinity only before going to a full alarm if not responded within a short time interval.

<p>There is no installation or test certificates for the Emergency Electrical Luminaries, circuits supplying EEL has no additional protection.</p>	<p>The Council accept this has been resolved</p>
<p>The separation between floors is inadequate to prevent the spread of smoke and fire. In particular there is no additional separation provided under all three sets of stairs and there are areas where the original floors and under ceilings are perished and in a poor condition.</p>	<p>In the absence of an inspection or detailed information on the extent of the work carried out, it is not possible for the Tribunal to reach a clear decision on the adequacy of compartmentalisation. We are satisfied that Mr Wright has carried out significant works in respect of this issue by overlaying floorboards with hardboard in some locations (in accordance with stipulations in the earlier Improvement Notice), replacing or improving the partitioning between some rooms, and fixing new plasterboard ceilings in some locations. Equally, there is also evidence that further work is required in particular in respect of the staircases. A detailed specification is necessary to identify the precise work required both in respect of specification, location, and extent.</p>
<p>There is no directional fire safety signage</p>	<p>There is conflicting evidence on the need for and extent of signage and again in the absence of an inspection the Tribunal is unable to make a finding on this point</p>
<p>There is no adequate or safe secondary means of escape.</p>	<p>It is not an automatic requirement for there to be a secondary means of escape provided there is a satisfactory primary means of escape and all other fire precautions are satisfactory; a secondary means of escape is usual in larger, complex HMOs with a greater number of storeys than the Property. Mr Wright argues that there are two alternative routes for escape here: firstly, the use of a trap door on the first-floor landing which gives access to a redundant staircase leading to Room 13 and also a window on first floor landing. Evidence conflicts on the suitability and adequacy of the trap door – Ms White said it could not be opened whilst Mr Wright said was straightforward to open. Mr Wright said it was a fire door supported on structural beams with fire protection/smoke seals, but this could not be confirmed from the evidence available. The photographic evidence indicated that the window to the landing does not meet the requirements for an egress window and removing a casement (as Mr Wright says</p>

	residents were advised to do) is not an appropriate means of achieving an opening of satisfactory dimensions. If there is a secondary means of escape, then clearly it must be satisfactory.
There is an Aga cooker and an open coal fire located on the ground floor, there is no evidence that these have been adequately maintained and are safe to use.	This a Rayburn solid fuel cooker. There was no evidence it was in use and Mr Wright states that it has not been used for ten years. The Tribunal finds that it was not in use.
The ovens are dirty and have a build-up of food.	The photographic evidence does show ovens in a dirty condition, but this would appear to be a matter more properly falling within the ambit of management regulations.
There is a use of candles, matches, incense sticks and similar in a majority of the bedrooms.	There was photographic evidence of occupier misuse with one detector head masked by a sock. It is accepted that the Property is occupied by some residents whose behaviour can be problematic and this is again a matter which needs to be controlled by effective management. The HHSRS does separate out lifestyle issues when scoring hazards and this is again an issue that appears to be a matter more properly falling within the ambit of management regulations.
The primary firefighting equipment such as extinguishers and fire blankets are poorly maintained with no evidence of testing.	It is accepted by the Council that the fire blankets in the kitchen are fit for their purpose. There was no direct evidence of inspection dates on the fire extinguishers although it was clear that the extinguishers were not mounted. Mr Wright maintained that it would only be himself who would use the fire extinguishers but if provided, fire extinguishers must be maintained annually in accordance with the relevant British Standard.
Personal Hygiene, Sanitation and Drainage	
There is lack of adequate washing and sanitary accommodation for the current occupancy as a House in Multiple Occupation and the caravans in the rear garden.	The Council accept this has been resolved
There is a the discharge of untreated foul waste on to the garden from the occupants of caravans in the rear garden	The Council accept this has been resolved

There is the discharge of waste water discharged onto the paths from the occupants of the caravans	The Council accept this has been resolved
There is no supply of potable water, sanitation and drainage serving the caravans in the rear garden of the HMO.	The Council accept this has been resolved
There is an insufficient hot water supply within the property used by all tenants.	The Council accept this has been resolved
There is a lack of security and privacy with the bathroom on the ground floor, first floor and second floor used by all tenants.	Mr Wright maintained that catches/handles had been removed to maximise ventilation and thereby reduce the risk of COVID-19 transmission. Whilst appreciating an apparently well-intentioned motive, the Tribunal does not consider that this outweighs the need for privacy in bathrooms.
There is insufficient floor and wall coverings on the ground, first and second floor bathrooms which cannot be readily cleansed used by all tenants.	Mr Wright maintains these have been replaced and the photographic evidence is consistent with this. The seals between the floor covering and the wall surfaces in the bathroom used as a wet room do not appear robust.
Excess Cold	
The heating to the property and associated caravans is inadequate.	The Council accept this has been resolved
There is no Energy Performance Certificate for the property.	The Council accept this has been resolved
There is the presence of poorly maintained and ill-fitting single glazed windows	Mr Wright maintains that it is the window to his own room that is in particularly poor condition and that he intends to rectify this. The photographic evidence does show that a number of the windows are still original to the Property; this is perfectly acceptable provided that they are maintained in good condition with the casements in good repair and fitting close to the frame. It is not possible for the Tribunal to assess whether the windows are permitting draughts to an excessive degree. The fact that windows are single glazed is not of itself a significant issue provided that they are in good order.
There is the presence of poorly maintained and ill-fitting external doors	The Council do not seem to have made a distinction between the rear door of the house, and the two doors to the rear transverse passage. The rear door of the house opens onto an unheated transverse passageway which runs full width across the back of the house and separates the main house from an annexe and has the

	characteristic of being a covered access way with the doors at either end of the passageway. The prime concern of the Council in respect of this hazard should, in the opinion of the Tribunal, be the rear external door of the main house.
There is insufficient insulation within the loft space.	The Council accept this has been resolved
Domestic Hygiene, Pests and Refuse	
There is insufficient floor covering on the second floor kitchen	The Tribunal finds this has now been replaced.
There is a live mouse infestation within the property. Evidence was found within both kitchens and bedroom 1	Mr Wright maintains that there is no evidence of mice or other pests in the property with traps having been set for some months and none having been sprung. Other than a reference to smell associated with mice in the pantry, the Council do not produce any direct evidence, photographic or otherwise, of actual infestation.
There is significant harbourage within the outbuildings at the rear of the property.	The Council acknowledges that the gardens are significantly tidier and clear of large accumulations but maintains there are items that could provide harbourage in the outbuildings (see below regarding soft furnishings). There is insufficient direct evidence for the Tribunal to make a finding.
There is inadequate provision of storage of household waste.	The Council accept this has been resolved
There are a number of access points into the property for rodents by virtue of disrepair and by means of ill-fitting doors on the front, rear and side and also	The evidence is conflicting with the Council maintaining that disrepair to the Property allows for both entry of vermin and for food and debris to collect with Mr Wright stating that there are minor settlement cracks as would be expected in a property of this age, but none would permit the entry of vermin and holes for the entry of services are sealed. It is more than possible that disrepair to the doors to the rear transverse passage would permit the entry of vermin although this is not considered likely with the windows.
There are large accumulations of soft furnishings inadequately stored in the rear garden.	The Council accept the majority of accumulations have been removed. Mr Wright acknowledged that discarded soft furnishings are used as garden furniture and the Tribunal is of the view that these could indeed provide a harbourage.