FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	**:**	**BIR/00GA/HMD/2022/0001** **BIR/00GA/HPO/2022/0001**
Property	**:**	**White Lodge, 50 Ledbury Road, Hereford, HR1 2SY**
Applicant	**:**	**Mr Martin Rohde**
Respondent	**:**	**Herefordshire Council (Ref:U/003346)**
Type of application	**:**	**(1) Appeal against Prohibition Order under paragraph 7(1) Part 3 of Schedule 2 to the Housing Act 2004** **(2) Appeal against HMO Declaration Notice under paragraph 255 (9) of the Housing Act 2004**
Tribunal members	**:**	**Judge C Payne (Chair)** **Mr A Lavender**
Date and place of hearing	**:**	**Inspection 11 April 2022** **Hearing 12 April 2022 (Virtual)**
Date of decision	**:**	**12 July 2022**

DECISION ON APPEAL
OF PROHIBITION ORDER AND HMO DECLARATION NOTICE

Decision

The Tribunal determines that:

1. The Prohibition Order dated 23 December 2022 is confirmed but varied to read:

   HAZARD NO 24: FIRE SAFETY
   DEFICIENCIES:

   2nd floor flat, far left bedroom – Occupation for Sleeping of a room beyond a communal living room meaning escape in the event of a fire is through a risk room with no other means of escape.

2. The Applicant's appeal dated 20 January 2022 against the HMO Declaration Notice dated 16 December 2021 is dismissed.

3. The Respondent's Declaration Notice dated 16 December 2021 is confirmed.

Background

Prohibition Order

4. On the 14 December 2017, the Respondent served an Emergency Prohibition Order under section 43 Housing Act 2004 ("the Act"). On the 26 January 2018 the Applicant lodged an appeal. The Appeal was heard by the Tribunal on 19 June 2018 and a Decision issued on 10 July 2018 confirming the Emergency Prohibition Order.

5. As the majority of items listed in the Emergency Prohibition Order dated 19 June 2018 had been remedied, notice of revocation of the Emergency Prohibition Order was given on 23 December 2021.

6. The outstanding issue that has not been resolved is deficiency number 4, which states:

Occupation of a bedroom/sleeping area beyond a kitchen dining room on the second floor, through the highest risk room

7. On the 23 December 2021, when revoking the Emergency Prohibition Order, the Respondent issued a Prohibition Order under s20 of the Act, which prohibited the use of the far left bedroom in second floor flat for sleeping. The Prohibition Order does not restrict the use of the other 10 bedrooms in the property.

8. The Hazard set out in the Prohibition Order is:

HAZARD NO 24: FIRE SAFETY

DEFICIENCIES:

1. *2nd floor flat, far left bedroom – Occupation for Sleeping of a room beyond a kitchen/dining room meaning escape in the event of a fire is through a risk room with no other means of escape.*

9. The Applicant lodged an appeal with the Tribunal against the Prohibition Notice on 20 January 2022.

HMO Declaration Notice

10. The Respondent's Environmental Health Officers, David John and Phillipa Long inspected the property on 9 December 2021. Further to that inspection, an HMO Declaration Notice under section 255 of the Act was issued by the Respondent.

11. The Applicant lodged an appeal with the Tribunal against the HMO Declaration Notice on 24 January 2022.

Submissions

12. The Applicant, Mr Rohde, provided a statement and a bundle of documents, which was undated but received by the Tribunal on 14 March 2022. In addition, a copy of the pages for 10 of the 11 rooms from the checking in book was provided following the inspection. The page for room 10, which is the far left room of the flat on the second floor, was not provided. Mr Rohde represented himself and provided verbal representations at the virtual hearing.

13. The Respondent provided statements from the two Environmental Health Officers who inspected the property on 9 December 2021. The first from Mr David John dated 13 January 2022 and the second from Ms Phillipa Long dated 16 February 2022, to which was attached copies of the notices and documentation from the inspection in December 2021. Neither Mr John nor Ms Long were able to attend the hearing. This meant their evidence could not be tested and this was in the mind of the Tribunal when considering that evidence. Mr Yarnold provided representations on behalf of the Respondent at the hearing.

The Law

Prohibition Order

14. 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 Housing Act 2004 ("the Act"), supplemented by the Housing Health and Safety Rating System (England) Regulations 2005 ("the Regulations").

15. 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.

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

17. 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).

18. 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".

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

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

20. 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.

21. Section 20 of the Act sets out the duty of a local authority to make a Prohibition Order and provides that

(1) If—

(a) the local housing authority are satisfied that a category 1 hazard exists on any residential premises, and
(b) no management order is in force in relation to the premises under Chapter 1 or 2 of Part 4,
making a prohibition order under this section in respect of the hazard is a course of action available to the authority in relation to the hazard for the purposes of section 5 (category 1 hazards: general duty to take enforcement action).

(2) A prohibition order under this section is an order imposing such prohibition or prohibitions on the use of any premises as is or are specified in the order in accordance with subsections (3) and (4) and section 22.

(3) The order may prohibit use of the following premises—

(a)if the residential premises on which the hazard exists are a dwelling or HMO which is not a flat, it may prohibit use of the dwelling or HMO;
(b) if those premises are one or more flats, it may prohibit use of the building containing the flat or flats (or any part of the building) or any external common parts;
(c) if those premises are the common parts of a building containing one or more flats, it may prohibit use of the building (or any part of the building) or any external common parts.

22. An owner of the whole or part of the specified premises may appeal against a prohibition order under paragraph 7(1) of Part 3 of Schedule 2 to the Act, which provides –

(1) A relevant person may appeal to the appropriate tribunal against a prohibition order.

23. The powers of a Tribunal on appeal under paragraph 7 are detailed in paragraph 11 of Part 3 of Schedule 2 of the Act, which provides –

(1) This paragraph applies to an appeal to the appropriate tribunal under paragraph 7.

(2) The appeal—

(a) is to be by way of a re-hearing, but
(b) may be determined having regard to matters of which the authority were unaware.

(3) The tribunal may by order confirm, quash or vary the prohibition order.

24. Under section 9(1)(b) of the Act, the local authority is required to have regard to the HHSRS guidance when carrying out their functions in relation to improvement notices, prohibition orders or hazard awareness notices.

25. The HHSRS Enforcement Guidance at paragraph 5.15 states

A prohibition order under section 20 or 21 of the Act is a possible response to a category 1 or a category 2 hazard. It may prohibit the use of part or all of the premises for some or all purposes, or occupation by particular numbers or descriptions of people.

26. Paragraph 5.21 of the HHSRS Enforcement Guidance states that it may be appropriate to make and order *in an HMO, to prohibit the use of specified dwelling units or of common parts.*

27. The HHSRS at paragraph 24.35 of annex D of the Operating Guidance specifically states that –

The means of escape from fire is particularly relevant to the spread of harm. If the means of escape allows quick and easy exit from the accommodation, then there will probably be less severe harm, than if the escape from fire is more difficult. Travel distance from the accommodation to the final exit is relevant, as is the compartmentalisation of the means of escape to prevent ingress of smoke and flame. Emergency lighting will increase the speed of exit, whereas a steep and awkward staircase will impede it.

HMO Declaration

28. Section 254 of the Act sets out the meaning of "house in multiple occupation"-

(1) For the purposes of this Act a building or a part of a building is a "house in multiple occupation" if—

(a) it meets the conditions in subsection (2) ("the standard test");

(2) A building or a part of a building meets the standard test if—

(a) it consists of one or more units of living accommodation not consisting of a self-contained flat or flats;
(b) the living accommodation is occupied by persons who do not form a single household (see section 258);
(c) the living accommodation is occupied by those persons as their only or main residence or they are to be treated as so occupying it (see section 259);
(d) their occupation of the living accommodation constitutes the only use of that accommodation;
(e) rents are payable or other consideration is to be provided in respect of at least one of those persons' occupation of the living accommodation; and
(f) two or more of the households who occupy the living accommodation share one or more basic amenities or the living accommodation is lacking in one or more basic amenities.

29. Section 255 of the Act deals with HMO Declarations and provides –

(1) If a local housing authority are satisfied that subsection (2) applies to a building or part of a building in their area, they may serve a notice under this section (an "HMO declaration") declaring the building or part to be a house in multiple occupation.

(2) This subsection applies to a building or part of a building if the building or part meets any of the following tests (as it applies without the sole use condition)—

(a) the standard test (see section 254(2)
(b) the self-contained flat test (see section 254(3)), or
(c) the converted building test (see section 254(4)), and the occupation, by persons who do not form a single household, of the living accommodation or flat referred to in the test in question constitutes a significant use of that accommodation or flat.

(3) In subsection (2) "the sole use condition" means the condition contained in—

(a) section 254(2)(d) (as it applies for the purposes of the standard test or
the self-contained flat test), or
(b) section 254(4)(e), as the case may be.

Subsections (4) to (8) relate to the content of the notice and to the date on which it takes effect.

(9) Any relevant person may appeal to a residential property tribunal against a decision of the local housing authority to serve an HMO declaration. The appeal must be made within the period of 28 days beginning with the date of the authority's decision.

(10) Such an appeal—

(a) is to be by way of a re-hearing, but
(b) may be determined having regard to matters of which the authority were
unaware.

(11) The tribunal may—

(a) confirm or reverse the decision of the authority, and
(b) if it reverses the decision, revoke the HMO declaration.

(12) In this section and section 256 "relevant person", in relation to an HMO
declaration, means any person who, to the knowledge of the local housing authority, is—

(a) a person having an estate or interest in the building or part of the building
concerned (but is not a tenant under a lease with an unexpired term of 3 years or less), or
(b) a person managing or having control of that building or part (and not falling within paragraph (a)).

30. Section 256 of the Act addresses the Revocation of HMO Declarations and provides -

(1) A local housing authority may revoke an HMO declaration served under section 255 at any time if they consider that subsection (2) of that section no longer applies to the building or part of the building in respect of which the declaration was served.

(2) The power to revoke an HMO declaration is exercisable by the authority either—

(a) on an application made by a relevant person, or
(b) on the authority's own initiative.
…

(4) A person who applies to a local housing authority for the revocation of an HMO declaration under subsection (1) may appeal to a residential property tribunal against a decision of the authority to refuse to revoke the notice.
…

(6) The tribunal may—

(a) confirm or reverse the decision of the authority, and
(b) if it reverses the decision, revoke the HMO declaration.

31. Section 260 of the Act set out the presumption that sole use condition or significant use condition is met as follows -

(1) Where a question arises in any proceedings as to whether either of the following is met in respect of a building or part of a building—

(a) the sole use condition, or
(b) the significant use condition,

it shall be presumed, for the purposes of the proceedings, that the condition is met unless the contrary is shown.

32. The Tribunal is further assisted by consideration of the cases set out below.

33. In the House of Lord's case of **Street v Mountford (1985) 17 H.L.R 402**, Lord Templeman provided a clear explanation of the distinction between a lease and a licence as follows:

To constitute a tenancy the occupier must be granted exclusive possession for a fixed or periodic term certain in consideration of a premium or periodical payments. The grant may be express, or may be inferred where the owner accepts weekly or other periodical payments from the occupier.

The case also stressed the need to look at the reality of the arrangement and to disregard artificial labels which may be employed in documents

34. In the Court of Appeal case of ***Williams v Horsham*** **[2004] 1 WLR 1137** the meaning of "sole or main residence" in the context of Council Tax was considered by Lord Philips MR as:

"…"sole or main residence" refers to premises in which the taxpayer actually resides. The qualification "sole or main" addresses the fact that a person may reside in more than one place. We think that it is probably impossible to produce a definition of "main residence" that will provide the appropriate test in all circumstances. Usually, however, a person's main residence will be the dwelling that a reasonable onlooker, with knowledge of the material facts, would regard as that person's home at the material time."

35. In the decision of the Upper Tribunal, in a case which coincidentally also concerned the Applicant, **Herefordshire Council v Martin Rohde [2016] UKUT 0039 (LC)** , Judge Cooke clarified that although a building may be a house in multiple occupation because it meets certain factual criteria – for example the "standard test" in section 254(2) - it will also be a house in multiple occupation where the local authority has made an HMO declaration under section 255. Section 255 enables the local authority to make an HMO declaration if it is satisfied that the building meets the "standard test", but with an important modification: rather than having to find that all six conditions in section 254(2) are met, the local authority need only be satisfied that "*the occupation, by persons who do not form a single household, of the living accommodation or flat referred to in the test in*

question constitutes a significant use of that accommodation or flat" rather than the "only use" as required in section 254(2)(d). And in proceedings where there is an issue as to whether that "significant use" provision is met, section 260 of the Act provides that it is presumed to be met unless the contrary is shown.

Inspection

36. The Tribunal inspected the property on the morning of 11 April 2021 in the presence of the Applicant, Mr Rohde, Ms Mayya Kostyuk, who is the joint owner of the property, and the Respondent's representative, Mr Yarnold.

37. To the side and rear of the Property there is a communal parking area for use of those occupying the property. A section of the car park is fenced off for use as storage by the Applicant. New signs advertising the property as a Hotel, with a mobile number for contact purposes, and indicating a Reception in the basement were in place to the front of the property.

38. The Tribunal were shown a communal area on the ground floor of the property, which included 2 communal kitchens and a communal room. The communal room contained 6 fridge/freezers of various makes and models and a laundry basket for use by the occupiers. The purpose of this area is to provide cooking and food storage space for the individuals occupying rooms in the property.

39. The property has 9 bedrooms, 3 on the ground floor and 6 on the first floor, as well as a two bedroom, self-contained, flat on the second floor. The Tribunal were able to inspect 7 of the 9 bedrooms, the two not inspected having occupants who were asleep in them at the time of the inspection. Of the bedrooms inspected one was unoccupied. Only one of the bedrooms in the flat was occupied, the back left bedroom that is the subject of the Prohibition Order being unoccupied.

40. When inspecting the rooms, the Tribunal noted that the occupants had substantive belongings in their rooms, which were fully unpacked. As well as large quantities of clothing and toiletries, the belongings included other items such as ornaments, pictures, jewellery stands, vases with flowers in them, personal cookware and clothes drying racks. Some occupiers had installed additional storage furniture for their belongings in their room, beyond that which was provided by the Applicant. The bedding and towels in each room were of different designs and styles and of a domestic nature. The furniture and decoration in each room varied.

41. In the flat it was noted that the kitchen had been partitioned off from the communal living room. The far left bedroom was empty and unoccupied. The only means of escape in a fire from the far left bedroom was through the living room and along a corridor adjacent to the partitioned kitchen to the front door of the flat creating an inner room. The distance from the rear wall of the bedroom to the front door of the flat is 8.9 meters.

42. The Tribunal inspected the basement of the property, which consists of a laundry room, an ironing room, and a back room in which there was a clear desk and chair. The desk and chair were identified by the Applicant as the Reception area. There was no computer or telephone. The only paperwork in the reception area was a signing in book, a copy of which was provided to the Tribunal. There was nothing else to indicate the use of that area as a Reception or office.

43. There were no staff on site other than Ms Kostyuk, who the Tribunal were advised works part time at the property to check in and check out individuals using the checking in book.

The Facts

Ownership of the Property

44. The Land Registry records show the Proprietor of the Property to be G-Mac Technical Services. However, in its decision of 10 July 2018 the Tribunal found that the Applicant and Ms Kostyuk are the joint beneficial owners of the Property and would be able, subject to late registration, to direct the trustee of the legal estate to dispose of the freehold title. The late registration of the transfer has still not been addressed by the Applicant and Ms Kostyuk but the situation remains the same as in 2018. As such, the Tribunal considers the Applicant to be an 'owner' of the Property and the 'relevant person' entitled to make the two appeals before the Tribunal.

Prohibition Order

45. The Respondent provided a copy of a Fire Risk Assessment prepared by Bryan Morgan of Fire and Risk Management Services Limited dated 27 May 2021. The report suggests that escape from the second floor *"can be made by means of a protected route that discharges to a place of safety outside."* The report does not address the fact that the only means of escape from the far left bedroom is through the property's living room and along a corridor adjacent to the kitchen. It should be noted that the Fire Risk Assessment was undertaken to meet the requirements of the Regulatory Reform (Fire Safety) Order 2005 (FSO) – PAS79. Having regard to Article 6 of the FSO, it should be noted that the Order does not apply to a domestic premises, except to the extent mentioned in Article 31(10). Therefore, the FSO and the risk assessment did not direct itself to the inner room situation in the second floor flat (domestic premises) as noted on page 17 of the Risk Assessment, The Tribunal was therefore not persuaded by this report as it failed to identify the deficiency and poor internal layout of the flat.

46. The Tribunal noted upon inspection of the flat that, despite the partitioning off of the kitchen, the means of escape from the far left bedroom was still through the communal living room ,which is a 'risk room'. In the event of a fire, there was no alternative means of escape.

47. The Tribunal finds that, if there were a fire in the livingroom, a person or member of the vulnerable age group (over 60's) sleeping / occupying the back left bedroom of the flat would not have an adequate means of escape. Ultimately, without either an alternative means of escape or some other remedial action being taken to reduce or remove the risk for that individual. There is a significant risk that, if there were a fire in the livingroom, a person sleeping / occupying that bedroom would suffer serious injury or death. Consequently, the Tribunal considers that it is appropriate for the Respondent to have scored this fire hazard as a category 1 hazard.

48. The Tribunal, finding there is a category 1 fire hazard present at the property, notes that the means of escape is not through the Kitchen/Dining Room, as stated in the Prohibition Notice dated 23 December 2021, but through a living room partitioned off from the kitchen area, which still constitutes a 'risk room'.

49. Given the potential for serious injury or death resulting from that hazard, the Tribunal finds that it is appropriate for the Respondent to have issued a Prohibition Order to prevent the use of that bedroom for sleeping until such time as action has been taken to remove or reduce the risk to an acceptable level. The issue had been previously raised in the Emergency Prohibition Order but no remedial action had been taken to adequately address and mitigate the risk.

50. The Respondent directed the Tribunal to part of an article from an unidentified website regarding the LACORS Guidance in which it is stated that ' *The LACORS Guide isn't law, but is regarded as legislation…*' The Applicant suggested the Tribunal was, therefore, bound by the guidance. The LACORS Guidance is designed to assist enforcers, landlords, managing agents and tenants to make residential buildings safe from fire and navigate their obligations under the Housing Act 2004 and the Regulatory Reform (Fire Safety) Order 2005. As such, the Tribunal is not bound by this guidance, but may choose to have due regard to it.

51. The article goes on to state that '*Properties that don't meet the requirements can only remain in use where it is 'not reasonably practical' for a landlord or homeowner to remedy the problem.'* The unidentified writer does not reference any particular section of the LACORS Guidance.

52. It is assumed that the writer may be referring to paragraph 9.9 of the LACORS Guidance which suggests that, *in the worst-case scenario* where the only exit internally is through a risk room, and it is impracticable to provide any other exit route then, exceptionally, with the use of FD30S fire doors, an enhanced system of automatic fire detection and, perhaps, the installation of a water suppression system it may be possible to lower the risk to an acceptable level. It states that these arrangements will not generally be suitable for bedsit-type accommodation.

53. Given the nature of the property and the lack of the recommended provisions under paragraph 9.9, the Tribunal was not persuaded that there are any grounds identified in the LACORS Guidance to suggest that the Applicant might be exempt from addressing the hazard that has been identified in relation to the inadequate means of escape from the back left bedroom of the second floor flat.

54. Paragraph 12.1 to 12.4 of the LACORS Guidance provides guidance in relation to inner rooms as follows:-

12.1 A room where the only escape route is through another room is termed as an "inner room" and poses a risk to its occupier if a fir starts unnoticed in the outer room. This arrangement should be avoided wherever possible. However, where unavoidable it may accept where the inner room is a kitchen, laundry or utility room, a dressing room, bathroom, WC or shower room.

12.2 Where the inner room is any other type of habitable room (for example living room sleeping room, workroom or study), it should only be acceptable if:

- *The inner room has access to a suitable door opening onto an alternative safe route of escape or it is situated on a floor not more than 4.5 m above ground level and has an escape window leading directly to a place of ultimate safety*
- *An adequate automatic fire detection and warning system in place*
- *A fire resisting door of an appropriate standard fitted between the inner and outer room (Usually FD30S*

12.3 Escape windows are only acceptable if they meet the requirements of paragraph 14.
12.4 .....

It is evident that the current layout of the flat creates an inner room but fails to meet the above criteria.

55. It was noted that there were ongoing discussions between the Applicant, Respondent, and local fire authority with a view to agreeing a resolution of the issue. At the time of the hearing, no agreement had been reached as to how the fire hazard might be mitigated, though there appeared to be a number of options available for consideration.

HMO Declaration

56. The Respondent, following their inspection in December 2021, concluded that the property was being used as an HMO. The Applicant's case is that it is being used as a hotel. In considering whether a property is being used as an HMO or a hotel, the Tribunal considered how this particular property was being used.

57. The Applicant advised the Tribunal that the property's rooms were advertised on www.booking.com and www.spareroom.co.uk. The Tribunal noted there was no active advert on www.booking.com and that the vacant bedroom in the property was being advertised as a 'flat share' on www.spareroom.co.uk. There is no website for the hotel and the only other advertising is the sign outside the front of the property showing a mobile number, which was erected between the Respondent's inspection on 9 December 2021 and the Tribunal's inspection of the property.

58. The Applicant advised the Tribunal that rooms are booked by calling a mobile telephone number. There is no formal booking system. All that is recorded on booking individuals into the property is their name, the date they took up occupancy of a room and the date they leave. No evidence was provided to the Tribunal that other information that a hotel would usually require, including the occupant's home address, nationality, and identification details, was collected by the Applicant. There was no evidence provided that any of the occupants had any other address or that they maintained any residence other than that of the property.

59. The Applicant's evidence was that there was a cleaner there each day between 10am and 2pm, with additional staffing provided the rest of the time by Ms Kostyuk and her daughter, though it was not clear what services they provided. No contracts of employment or other evidence was provided of there being staff engaged. The Tribunal's inspection took place during the cleaner's working hours but no cleaner was present on site. The Respondent's Mr John says in his statement that on 9 December 2021 an occupant let them into the property, there being no staff present then either. The Tribunal concluded that the staff presence at the property is minimal.

60. In the Reception area, there was no evidence of the paperwork or other items such as a computer or telephone that would be expected in a hotel. Booking in was done over a mobile and there was no signage or other indication that the table was, in fact, a reception. The Tribunal were not persuaded that this area was regularly staffed or used for the purpose of a hotel reception.

61. The Applicant told the Tribunal that the cleaner cleaned the communal areas, but did not go into the individual bedrooms unless a separate arrangement was made, for which a payment was charged. The occupiers, if they want their bedding or towels cleaned, could put them in the laundry basket in the communal room to be washed for them. Otherwise, occupiers are responsible for doing their own washing and cleaning their rooms.

62. The occupiers had all been given notice of the inspection in order to allow the Applicant to gain access to their rooms.

63. The evidence of Ms Long is that she observed '*significant amounts of personal belongings… which would indicate use as a main residence.*' during the Respondent's inspection in December 2021. This is consistent with what the Tribunal observed during its inspection, namely that the

occupiers all had a considerable volume of personal belongings in their rooms, fully unpacked, which consisted of far more than would be consistent with a temporary stay in hotel accommodation, and included items that suggested a permanence of residence and would not usually be taken to a hotel. Some occupiers had personalised their rooms or added additional furniture to them, which was not supplied by the Applicant.

64. The Tribunal finds that the occupiers have exclusive use of their rooms. The Applicant and his agents are not entitled to enter the private rooms without permission or invitation during occupation.

65. No catering is provided for occupants. They are given access to two kitchens and a dining room to enable them to prepare and eat their own meals. The Tribunal notes that not all hotels provide food, but that it is unusual for a hotel setting to provide such extensive communal cooking facilities for guests. This is, however, consistent with communal facilities provided in an HMO.

66. The Respondent's notes from their inspection in December 2021, recorded the length of time the occupants of the property at that time told them they had been staying at the property. This ranged from 1 month to over a year. The checking in book confirmed that this information was generally correct, though the timing on a couple of individuals was less than they had specified as they had added time that they lived in other properties let by the Applicant.

67. According to the checking in book, at the time of the Tribunal's inspection 6 of the of the 10 rooms had occupants in them that had been staying at the property for more than 3 months, with one occupant having been staying there over 12 months at that time. The majority of parties staying in the property for an extended period of time is more consistent with an HMO than a hotel.

68. The evidence of both parties agreed that the rooms were charged at between £90 to £120 per week, payable a week in advance. The Environmental Health Officer's contemporaneous notes from the inspection in December 2021 suggest that occupiers had paid deposits. The Applicant's evidence was that, at end of an agreed period of occupation, the occupiers could either extend their occupation term or give at least 1 weeks' notice and that, due to their having paid a week in advance, no payment was made for the last week of occupation. In a hotel setting a guest would book a room for a fixed period and pay for it. At the end of the period, they would be expected to vacate the room. Periodic payments for one week's occupancy, for an unspecified term, with notice required to end the arrangement is consistent with the letting of a room as part of an HMO rather than the day to day licence to occupy a hotel room.

69. The occupants are provided with a set of standard terms and conditions, entitled "Hotel Terms and Conditions" . These are stated to be read in conjunction with the booking confirmation, which was given verbally. The

terms are not consistent with the manner in which rooms are provided, suggesting they are charged per night, rather than in periods of 1 week.

70. During the inspection in December 2021, the Respondent's Officers took photographs of two Payment Logs from occupiers of rooms. The Applicant confirmed that these documents are used as receipt records for those occupants who choose to pay for their rooms in cash. The logs resemble rent record books with the occupant referred to as a 'tenant' and record the 'date moved in' and 'rental amount', being the amount charged per week for the room.

71. The Tribunal concludes that, taking into account how this particular property is being used, on the balance of probabilities the occupiers are occupying the property as their primary residence under individual leases.

72. The occupants listed in the checking in book are consistent with the names collected by the Environmental Health Officers during their inspection on 9 December 2021. The Respondent identified 6 separate, unconnected 'households' occupying rooms in the property at the time of their inspection in December 2021. The Tribunal's inspection and review of the checking in book identified 9 unconnected individuals, some with partners occupying rooms with them, staying at the property.

Discussion

73. The questions for the Tribunal are as follows:

a. Is the Tribunal satisfied that a Category 1 Hazard exists on the residential premises?
b. Was it appropriate for a Prohibition Order to be issued by the Respondent?
c. Should the Tribunal confirm, reverse, or vary the Prohibition Order?
d. Does the use of the building or part of the building meet the standard test under section 254(2) of the Act and the occupation, by persons who do not form a single household, of the living accommodation or flat referred to in the test in question constitutes a significant use of that accommodation?
e. Should the Tribunal confirm or reverse the decision of the Respondent to issue an HMO Declaration?

Is there a Category 1 Hazard?

74. For the reasons set out in paragraphs 46-49, the Tribunal finds that there is a category 1 hazard is present. Any individual, including the vulnerable age group (over 60s), sleeping / occupying the back left bedroom of the second floor flat has only one means of escape through a 'risk room', This presents a greater likelihood of them suffering serious harm or death in the event of a fire in the livingroom.

Was it appropriate for the Respondent to issue a Prohibition Order?

75. The Respondent is entitled under s20 of the Act to make a Prohibition

Order where they have identified a category 1 hazard. While it is only one of a number of enforcement options open to the Respondent, given the risk of serious injury or death it is considered reasonable and proportionate in the circumstances. The issue having already been raised in an Emergency Prohibition Order previously in 2018, and not adequately addressed, it was therefore appropriate for the Respondent to issue a Prohibition Order in respect of this outstanding issue when the Emergency Prohibition Order was revoked.

Should the Tribunal confirm, reverse or vary the Prohibition Order?

76. There is a category 1 hazard, though the partition of the kitchen was not reflected in the Prohibition Order issued on 23 December 2021. The Tribunal, therefore, confirms that the Prohibition Order should remain in place, but varies it to list the hazard as:

    HAZARD NO 24: FIRE SAFETY

    DEFICIENCIES:

    2nd floor flat, far left bedroom – Occupation for Sleeping of a room beyond a communal living room meaning escape in the event of a fire is through a risk room with no other means of escape.

77. The Prohibition Order specifies works that need to be undertaken, which if not carried out will result in the revoking of the order. These works primarily relate to the provision of a secondary means of escape, but alternative works may be considered, if they reduce or remove the hazard. Consequently, there may be a range of alternative solutions that could be acceptable and may include the removal of the partition between the bedroom and living room to form a single room with a travel distance of less than 9 meters or provision of a sprinkler or water suppression system.

78. The Tribunal has set out those alternative works but considers that the Respondent in conjunction with the Fire Service are best placed to set out what is appropriate in the circumstances. The Tribunal expects the Respondent to provide the Applicant with details of the options that are considered viable in a timely manner to enable him to make an informed choice.

Does the use of the building or part of the building meet the standard test under section 254(2) of the Act?

79. The Tribunal finds that property consists of 9 units of living accommodation, consisting of 9 bedrooms, which are not a self-contained flat or flats (s254(a)).

80. The Tribunal finds that living accommodation or bedrooms are occupied by parties who do not form a single household. There is no relationship between the occupiers of the separate rooms (s254(b)).

81. When considering whether or not the occupiers used the rooms in the property as their only or main residence the Tribunal took into account the manner in which the property was being used, noting in particular:

    a. The Tribunal finds that occupants of the rooms have exclusive occupation for weekly periodic terms in return for weekly periodic payments suggesting that they hold a Lease of their individual rooms (*Street v Mountford*). A Lease is consistent with a more permanent residence, whereas guests in a hotel would be expected to only have licence to occupy a room for a fixed period and would not be entitled to have exclusive possession or be required to give notice before ending their occupancy.

    b. The Tribunal finds that over half of the occupiers of the rooms have been residing there for more than 3 months and in one case over 12 months. In and of itself the length of occupation is not determinative of whether or not a property is a main or only residence of an occupier. However, the longer parties reside in a property, the more likely it is that they are treating it as their main residence.

    c. The Tribunal notes that occupiers had unpacked substantive belongings into the rooms, with a number of residents personalising their rooms with ornaments and pictures. Some had brought their own pots, pans, and cooking utensils. Some had added additional furniture to their rooms and drying racks for clothes. The Tribunal concludes that, to a reasonable onlooker, with knowledge of the material facts, the bedrooms are being used as individuals' homes (*Williams v Horsham*), suggesting that they view the rooms as a longer term residence and are treating them as their only or main residence for the time they are in occupation. While the quantity of belongings and personalisation did vary from room to room, a significant proportion of the rooms were clearly being used by parties as their primary residence (*Herefordshire Council v Martin Rohde).*

    d. The Tribunal does not find that the cleaning of the communal areas is inconsistent with a shared accommodation, where parties are using it as their main residence. No other services were provided that would be considered inconsistent with the property being used as the occupants only or main residence.

    e. The Tribunal notes that there was no evidence of any of the occupants of the rooms having any other address or place of residence during the time of their occupation.

82. Taking into account the points in paragraph 58, on the balance, the Tribunal finds that a significant number of the occupiers of the bedrooms are using the property as their only or main residence during their occupation of the property (s254(c)).

83. There was no evidence of the property being used for anything other than the occupiers use of it as living accommodation. The Tribunal, therefore, finds that the occupiers occupation of the living accommodation constitutes the only use of that accommodation (s256(d)).

84. Payment for the rooms is charged at regular weekly intervals and payable in advance. The Tribunal finds that the weekly payments constitute rent for the individual bedrooms (s254(e)).

85. The nine bedrooms' occupants share two communal kitchens and a communal common room/ dining room in which are situated communal fridge freezers. The bedrooms being occupied by unrelated individuals, the Tribunal finds that there are more than 2 households occupying the living accommodation and sharing these basic communal amenities. (s254(f)).

86. The Tribunal concludes that the manner in which the property is being used meets the Standard Test under section 254(2) of the Act and that the occupation of the property by persons who do not form a single household constitutes a significant, if not the only, use of the property.

87. Therefore, The Tribunal finds that the property is a House in Multiple Occupation (HMO) under section 254 of the Act.

88. This decision is not determinative on the planning use of the property.

Should the Tribunal confirm or reverse the decision of the Respondent to issue an HMO Declaration?

89. Having concluded that the property is being used as an HMO, the Tribunal finds that the Respondent was entitled to issue a declaration under section 255(1) of the Act. Under section 255(11)(a) of the Act, the Tribunal confirms the decision of the Respondent local authority to issue an HMO Declaration. The declaration, therefore, comes into force 28 days after the date of this decision or, if there is a further appeal, when the Upper Tribunal confirms the notice.

Appeal

90. 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 Payne
Chair
First-tier Tribunal (Property Chamber)