



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

**Case Reference** : **CAM/22UN/HPO/2021/0012**

**Property** : **First Floor, Raj Palace, 28 North Station  
Road, Colchester, Essex CO1 1RB**

**Applicant** : **Mr Harum Rashid**

**Representatives** : **Mr Ajmal Khan**

**Respondent** : **Colchester Borough Council**

**Representative** : **Ms Jempson of Counsel**

**Type of  
Application** : **Appeal against prohibition order -  
sections 20-23 and paragraph 7(1) of Schedule  
2 to the Housing Act 2004**

**Tribunal Members** : **Judge N Hawkes  
Mr C Gowman MCIEH MCMi BSc**

**Venue and date of  
hearing** : **Brook Red Lion Hotel, 43 High Street,  
Colchester CO1 1DJ on 18 January 2022**

**Date of Decision** : **24 January 2022**

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**DECISION**

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## **Decision of the Tribunal**

The Tribunal dismisses the appeal and confirms the prohibition order dated 22 July 2021.

## **The Tribunal's determinations**

### **Background**

1. This is an appeal against a prohibition order dated 22 July 2021 in respect of First Floor, Raj Palace, 28 North Station Road, Colchester, Essex CO1 1RB ("the Property"). The prohibition order is expressed to prohibit the use of the Property for human habitation and residential use.
2. The Applicant's application is dated 11 August 2021 and Directions of the Tribunal were issued on 23 September 2021, leading to a final hearing on 18 January 2022.

### **The hearing and inspection**

3. The final hearing took place at the Brook Red Lion Hotel, 43 High Street, Colchester CO1 1DJ on 18 January 2022.
4. The Applicant was represented at the hearing by Mr Ajmal Khan, accompanied by the Appellant's son, Mr Maeidur Rashid. The Respondent was represented by Ms Jempson of Counsel.
5. The Tribunal heard oral evidence of fact on behalf of the Applicant from Mr Ajmal Khan. Mr Khan works as the Head of Fire Safety for Estates and Management for a local authority other than the Respondent.
6. The Tribunal heard oral evidence of fact on behalf of the Respondent from:
  - (i) Ms Nicky Collie, a Private Sector Housing Officer employed by the Respondent in its Private Sector Housing Team;
  - (ii) Mr Graham Foot, a Private Sector Housing Officer employed by the Respondent in its Private Sector Housing Team;

- (iii) Mr Daniel Ward, an Environmental Health Officer employed by the Respondent in its Private Sector Housing Team; and
  - (iv) Mr Keith Morland, a Private Sector Housing Officer employed by the Respondent in its Private Sector Housing Team.
- 7. The Applicant’s representatives confirmed that they had received a copy of the Respondent’s hearing bundle. However, they did not have the bundle with them at the hearing and the Respondent’s representatives lent them an unmarked copy of the bundle. The Tribunal paused the hearing in order to give Mr Khan time to re-read the written statements of each of the Respondent’s witnesses before questioning them. The Tribunal also arranged for a short break to take place between the witness evidence and the parties’ closing submissions.
- 8. The Tribunal inspected the Property immediately before the hearing. The Property is situated above a restaurant and it comprises two rooms plus a shower/WC. There are no kitchen facilities. At the time of the Tribunal’s inspection, there were two beds in each room with makeshift screens separating the bed areas. There were racks to hang clothes, other storage spaces, chairs and portable electric heaters. In one of the rooms there was a television. At the time of the Tribunal’s inspection, there were few personal belongings in either of the rooms. There were replacement uPVC double glazed windows to the front elevation and there was broken and missing glazing to the window of the shower room.

**The issues**

- 9. The Directions dated 23 September 2021 identify a number of issues for the Tribunal to consider. The only issue in dispute at the hearing was whether the or not the Property comprises “residential premises”.
- 10. It is the Applicant’s case that the Property does not comprise “residential premises”; that the Housing Act 2004 (“the 2004 Act”) therefore does not apply; and that the Respondent has no jurisdiction to issue a prohibition order. The Respondent contends that the Property is a “dwelling” and that it therefore comprises “residential premises” within the meaning of the 2004 Act.
- 11. The 2004 Act contains the following provisions (emphasis supplied):

*5 Category 1 hazards: general duty to take enforcement action*

(1) If a local housing authority consider that a category 1 hazard exists **on any residential premises**, they must take the appropriate enforcement action in relation to the hazard.

(2) In subsection (1) “the appropriate enforcement action” means whichever of the following courses of action is indicated by subsection (3) or (4)–

- (a) serving an improvement notice under section 11;
- (b) making a prohibition order under section 20;

21 Prohibition orders relating to category 2 hazards: power of authority to make order

(1) If–

(a) the local housing authority are satisfied that a category 2 hazard exists **on any residential premises**, and

(b) no management order is in force in relation to the premises under Chapter 1 or 2 of Part 4,

the authority may make a prohibition order under this section in respect of the hazard.

1 New system for assessing housing conditions and enforcing housing standards

...(4) In this Part “**residential premises**” means–

(a) **a dwelling;**

(b) an HMO;

(c) unoccupied HMO accommodation;

(d) any common parts of a building containing one or more flats.

(5) In this Part–

“building containing one or more flats” does not include an HMO;

“common parts”, in relation to a building containing one or more flats, includes–

(a) the structure and exterior of the building, and

(b) common facilities provided (whether or not in the building) for persons who include the occupiers of one or more of the flats;

**“dwelling” means a building or part of a building occupied or intended to be occupied as a separate dwelling;**

“external common parts”, in relation to a building containing one or more flats, means common parts of the building which are outside it;

“flat” means a separate set of premises (whether or not on the same floor)–

(a) which forms part of a building,

(b) which is constructed or adapted for use for the purposes of a dwelling, and

(c) either the whole or a material part of which lies above or below some other part of the building;

“HMO” means a house in multiple occupation as defined by sections 254 to 259, as they have effect for the purposes of this Part (that is, without the exclusions contained in Schedule 14);

“unoccupied HMO accommodation” means a building or part of a building constructed or adapted for use as a house in multiple occupation but for the time being either unoccupied or only occupied by persons who form a single household.

*(6) In this Part any reference to a dwelling, an HMO or a building containing one or more flats includes (where the context permits) any yard, garden, outhouses and appurtenances belonging to, or usually enjoyed with, the dwelling, HMO or building (or any part of it).*

*(7) The following indicates how this Part applies to flats–*

*(a) references to a dwelling or an HMO include a dwelling or HMO which is a flat (as defined by subsection (5)); and*

*(b) subsection (6) applies in relation to such a dwelling or HMO as it applies in relation to other dwellings or HMOs (but it is not to be taken as referring to any common parts of the building containing the flat).*

*(8) This Part applies to unoccupied HMO accommodation as it applies to an HMO, and references to an HMO in subsections (6) and (7) and in the following provisions of this Part are to be read accordingly.*

12. The Respondent's case concerning the other issues identified in the Directions dated 23 September 2021 was not challenged by the Applicant. The Tribunal noted that some of the windows at the Property appeared to have been renewed since the prohibition notice was served with double glazed units and the Tribunal questioned Mr Morland regarding this. Mr Morland stated that there remains a category 1 cold hazard at the Property because some windows remain single glazed and because the Property is uninsulated with no fixed controllable source of heating. The Tribunal accepts this evidence.
13. Having considered all the evidence, the Tribunal is satisfied that the Respondent has made out its case concerning the issues which are not in dispute between the parties.
14. As stated in the Directions, in accordance with paragraph 11(2) of Schedule 2 to the 2004 Act, the appeal is by way of a re-hearing but may be determined having regard to matters of which the Respondent was unaware.

### **The Tribunal's determinations**

15. Mr Khan stated that he does not himself work at the Raj Palace restaurant. However, he confirmed that Mr Rashid would not be giving evidence and that he would do his best to answer questions. He stated that staff at the restaurant travel in from London and that they work five days a week. Different members of staff have different working patterns and the days off are not necessarily consecutive.
16. In his witness statement, Mr Khan states: *"Staff travel from London to do their shifts; shift times are long: 10:00 am until 15:00, 17:00 to 2.30 It is not practical for staff to travel back and forth to London, so the owner has provided an area for them to rest, shower and change. Staff are provided with all meals which are taken in the kitchen and restaurant area, chefs change on out [sic] the chef whites on a regular basis around twice a day."*

17. Mr Khan stated that, due to the staff shift patterns, it is not practical for them to travel to London between shifts and, being on low wages, staff would not be able to afford to travel “to-and-fro” to London. When asked whether the staff sleep at the Property, Mr Kahn said: “*We prefer to say ‘rest’, shifts are long and arduous*”. When asked whether staff must sleep between shifts, Mr Khan stated that he would call it “*resting*” and that he did not know whether the staff fell asleep.
18. Ms Collie and Mr Foot both gave evidence that, on 2 July 2021, they carried out an unannounced visit to Raj Place together. Ms Collie stated that a colleague in the Respondent’s Environmental Protection Team, Leigh Newman, had received a complaint of a broken window to “*the flat*” above the restaurant and that she had suspected that the Property was being used as staff accommodation.
19. Ms Collie and Mr Foot both state that they asked a chef if there were people living upstairs and that he told them four people were living there and confirmed that the Property was his main home.
20. It is the Applicant’s position that all three chefs at the restaurant speak Bengali and that none of them speak English. When this was put to Ms Collie by Mr Khan, she stated that she had spoken in English and that the man she had spoken to had answered her in English.
21. Ms Collie said that she had spoken to a man in the kitchen who was preparing food. She introduced herself by saying that she was from the Council and that she was enquiring about a broken window. She gave evidence that the man had understood her. She said she did not ask him for his name. She also said that the man had appeared nervous on being asked whether the Housing Officers could go upstairs to view the Property and that, at this stage he had asked them to return at 5 pm when his boss would be back.
22. Mr Foot stated that the man they had spoken to had a heavy accent and was a bit nervous but that he had obviously understood them as he had explained that the owner would be back at 5 pm if they wanted to go upstairs. Mr Foot confirmed that they did not ask the man for his name but simply asked whether he was living at the Property.
23. Mr Ward gave evidence that he visited the Property on 15 July 2015 and that there was one person sleeping in a bed when he walked in. He gave evidence that in one room at the Property there had been two beds and in another there had been two beds and a sofa bed. He had also noted the presence of personal belongings such as bags, clothes and tobacco and he has provided colour photographs. In Mr Ward’s view, it was clear that the rooms were being used for sleeping.

24. In a handwritten notebook entry dated 12 July 2021, Mr Ward records that, on being asked whether the Property was staff accommodation, Mr Maeidur Rashid had stated “*one person is staying there sometimes*”. On being questioned by Mr Khan concerning the photocopied notebook entries exhibited to his witness statement, Mr Ward produced the original notebook to be examined. Mr Khan then took no further issue with the notebook.
25. At paragraph 8 of his witness statement, Mr Ward states that he believed that the Property was being used by at least 4-5 people sharing rooms who were unrelated and who worked in the ground floor restaurant and that this caused a crowding and space hazard. On being questioned by Mr Khan, Mr Ward accepted that he was not sure, “off the top of his head”, how many people would need to occupy the Property in order for it to become crowded.
26. Mr Morland accompanied Mr Ward and he confirms the presence of beds all with bedclothing, furniture and racks for the storage of personal belongings and clothing.
27. Ms Jephson referred the Tribunal to *Uratemp Ventures limited v Collins* UK HL [2001] 43 and to *JLK Limited v Ezekwe* [2017] UKUT 277 in relation to the meaning of “dwelling” in other contexts but stated that there are no authorities concerning the meaning of “dwelling” or “residential premises” in the 2004 Act.
28. It is not in dispute that the Respondent has authorised the use of the Property as commercial premises. Mr Khan submits that the restaurant business falls under the scope of the Regulatory Reform (Fire Safety) Order 2005 (“the 2005 Order”) where the definition of “workplace” includes any premises “not being domestic premises” which are made available to an employee as a place of work including any place “where facilities are provided for use in connection with that place of work”.
29. Residential premises are not defined in the 2004 Act with reference to the 2005 Order. In our view, the issue of whether the Property comprises residential premises is a question of fact to be determined in accordance with the definition set out in the 2004 Act on the basis of the available evidence.
30. We accept, on the balance of probabilities, the evidence of Ms Collie and Mr Foot that on 2 July 2021 they spoke, in English, to a man who was preparing food in the kitchen of the Raj Palace restaurant who said, in English, that he was one of four people sleeping at the property and that it was his only and main place of residence. Ms Collie and Mr Foot corroborate each other’s evidence and they remained consistent on being thoroughly questioned by Mr Khan.

31. It was apparent on hearing their response to Mr Khan's questions that Ms Collie and Mr Foot referred to the man who they spoke to on 2 July 2021 as a chef in their witness statements because they had found him in the kitchen preparing food and had therefore inferred that he was employed as a chef. Neither witness suggests that the man told them that he was employed as a chef. Mr Khan does not work at the restaurant and was therefore unable to give direct evidence concerning its day to day running. We note that it is possible that an English-speaking member of the waiting staff was helping out in the kitchen but, in any event, we accept that Ms Collie and Mr Foot were truthful witnesses.
32. Having reviewed the photographs showing beds and personal belongings which are contained within the hearing bundle, we are satisfied that it is likely on the balance of probabilities that the employee's statement to Ms Collie and Mr Foot that there were four people sleeping at the Property and that it was his only and main place of residence was true.
33. Mr Maaidur Rashid did not give evidence contradicting Mr Ward's account that, on 12 July 2021, he had accepted that one person was sometimes staying at the Property. This account is recorded in a contemporaneous note and we are satisfied that it is likely on the balance of probabilities to be accurate.
34. We also accept, on the balance of probabilities, the evidence of Mr Morland and Mr Ward including the evidence that someone was found to be sleeping at the Property on 15 July 2021. Given the shift patterns described above and the cost and practical difficulty of travelling to and from London, this evidence is highly plausible.
35. On the basis of the findings set out above, the Tribunal find it likely that, in July 2021, the Property was being occupied as a dwelling. At the time of our inspection, beds were made up, makeshift screens were in place which would provide some privacy between the bed areas, and there was space for the storage of clothing and personal possessions. Whilst the Property may not currently be used a separate dwelling, in light of what we observed and the history referred to above, we find that it is likely that the Property is intended to be occupied as a separate dwelling.
36. The Tribunal therefore finds that the Property comprises residential premises within the meaning of the 2004 Act and we confirm the prohibition order dated 22 July 2021. In making this finding, the Tribunal has applied the ordinary and natural meaning of "dwelling" and "residential premises".



37. We record that it is the Appellant's position is that he has no absolutely wish to use the Property for human habitation/residential use as prohibited by the prohibition order in any event.

**Name:** Judge Hawkes

**Date:** 24 January 2022

### **Rights of appeal**

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).