

Housing Act 2004

**ORDER DETERMINATION OF THE RESIDENTIAL PROPERTY TRIBUNAL**

**On the Applicant's appeal under para 7 Part 3 Schedule 2 Housing Act 2004 against the Respondent's prohibition order under sections 20 and 21 Housing Act 2004**

Appellant Occupant: Paul Robin Gibbons

Respondent Housing Authority: The Amber Valley Borough Council

Property: Wingfield Station Oakerthorpe Alfreton Derbyshire  
DE55 7LJ

Respondent's Prohibition Order: Sent 27 October 2006. Date 'served' 30 October 2006.  
Operative date 27 November 2006

Date of Appellant's appeal: 20 November 2006, received 24 November 2006

Hearing: No hearing. Determined without a hearing and after an inspection.

Members of the Residential Property Tribunal:

Mr T F Cooper BSc FRICS FCI Arb (Chairman)  
Mr S Duffy Dip EC Law, Barrister  
Professor N P Gravells MA

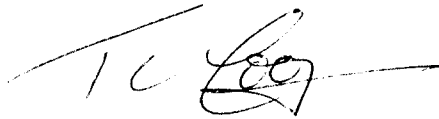
Date of Tribunal's order: 16 January 2007

Order: The appeal is dismissed and the Tribunal confirms the prohibition order save that the 'operative time' is pursuant to paragraph 14 Schedule 2 Housing Act 2004

**ORDER OF THE RESIDENTIAL PROPERTY TRIBUNAL  
UNDER PARAGRAPH 11(3) SCHEDULE 2 HOUSING ACT 2004**

Upon considering, without a hearing, Paul Robin Gibbons' appeal against The Amber Valley Borough Council's prohibition order sent to Mr Gibbons on 27 October 2006, prohibiting the use of the entirety of Wingfield Station Oakerthorpe Alfreton Derbyshire DE55 7LJ as a dwelling, the Residential Property Tribunal confirms the said prohibition order. Save that, pursuant to paragraph 14 Schedule 2 the 'operative time' is, in summary: if this order is appealed to the Lands Tribunal, the time when a decision is given on appeal which confirms the Order; or if this order is not appealed to the Lands Tribunal, the time when an appeal may be brought to the Lands Tribunal expires.

T F Cooper  
(Chairman)

A handwritten signature in black ink, appearing to read 'T F Cooper', with a long horizontal stroke extending to the right.

Date and the date on which reasons for this decision are given: 16 January 2007

## The Tribunal's reasons for its order

### Introduction:

- 1 **Mr Paul Robin Gibbons** (the '**Appellant**') and owner occupier of the whole of Wingfield Station Oakerthorpe Alfreton Derbyshire DE55 7LJ (the '**Property**') appeals (the '**Appeal**') under para 7 Part 3 Schedule 2 *Housing Act 2004* (the '**Act**') against the prohibition order (the '**Order**') made under ss. 20 and 21 the Act by **The Amber Valley Borough Council** (as the local housing authority) (the '**Respondent**') sent to the Appellant on 27 October 2006.
- 2 Our jurisdiction to decide the Appeal arises from para 7(1) Part 3 Schedule 2 (the '**Schedule**') of the Act. Para 11(3) the Schedule gives us the discretion to confirm, quash or vary the Order.

### No hearing:

- 3 Under para 18 *The Residential Property Tribunal Procedure (England) Regulations 2006* (the '**2006 Regulations**') notice has been given of the intention to proceed without an oral hearing and neither party has requested an oral hearing. Mr Gibbons makes written representations contesting the Order. The Respondent is represented by its principal solicitor, **Mr P Benski**, who, in written representations, supports the Order. Copies of both parties' representations have been sent to the opposing party.

### Inspection:

- 4 We inspected the Property on 11 January 2007 in the presence of Mr Gibbons and we take account of what we saw at our inspection.

### The Property and its features:

- 6 The Property is a Grade II listed detached building (the '**Building**') of brick and low pitch roof single storey construction with curtilage land. The Building was formerly a station building with high ceilings and is now a dwelling owned and occupied by Mr Gibbons. However, he uses only two rooms for day-to-day living: namely one room to live in, cook in and sleep in with a small electric fan heater for space heating; and one adjoining room with a wc and wash hand basin (no bath nor shower). The other rooms are used for storage. The Property adjoins a main-line railway line and access to the Property is over a hardcore surfaced single track roadway. The curtilage is on three sides of the Building and is relatively level.

### The Order:

- 7 While there may be potential argument that there are minor defects in the form of the Order it is obvious to us, it would be obvious to a reasonable occupant of the Property and it seems to be obvious to Mr Gibbons that the Order prohibits use of the entire Property as a dwelling, under s.20, owing to category 1 hazards (by reference to s.2 and *The Housing Health and Safety Rating System (England) Regulations 2005* and by reference to s.9 and *Housing Health and Safety Rating System Operating Guidance* issued by the Office of the Deputy Prime Minister February 2006) detailed in Schedule 1 of the Order (copy attached hereto). The Order includes, consistent with s.22(2)(e), the remedial action (the '**Remedial Action**') which the Respondent considers would, if taken in relation to the hazards, result in its revoking the Order under s.25 (Respondent's duty to revoke the Order if at any time satisfied that the hazards do not exist).

### Mr Gibbon's case:

- 8 In his written representations Mr Gibbons says the Order should not come into effect 'until

- alternative arrangements have been made', confirmed by Mr Gibbons at our inspection as meaning his contention that the Order be suspended for three months to allow him a reasonable time to arrange alternative accommodation - possibly a portakabin in the curtilage. He does not deny that substantial work is required to the Building but contends that some of the work alleged to be required in the Remedial Action (see para 7 above) is unnecessary or inappropriate.
- 9 He says the possibility of the Respondent serving an improvement notice or a hazard awareness notice as the best course of action, under para 8(2) the Schedule, 'sounds promising'. We infer he requests us to consider quashing the Order, leaving the Respondent to serve an improvement or hazard awareness notice as the best course of action.
- 10 He stresses he is not complaining about the living conditions at the Property and the Respondent need not have initiated enforcement action.

**Mr Benski's case:**

- 11 In opposing Mr Gibbon's appeal, Mr Benski says: the Building is semi-derelict, has no proper drainage system, dangerous electric wiring and is a serious risk to any occupant; despite the Respondent providing a schedule of work necessary to make the Building safe to live in, with a list of appropriate contractors to ascertain the costs, no significant remedial work has been carried out; and the Respondent had no choice but to make the Order to safeguard the health and safety of the occupant.

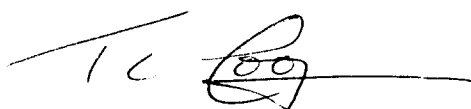
**Our determination:**

- 12 The Respondent, in the Order, makes clear that category 1 hazards exist at the Property. We agree and are concerned for an occupant's health and safety; it would be irresponsible of us to suspend the Order for any period greater than that specified in the Act (the 'operative time' - see para 15 below). While Mr Gibbons contends the extent of the Remedial Action (see para 7 above) is excessive, we find the Remedial Action is necessary and appropriate to deal with the identified hazards and we are not persuaded that the Order should be varied by omitting or substituting any of the works detailed in the Remedial Action.
- 13 We accept the Building is a serious risk to any occupant and we do not accept an improvement notice or a hazard awareness notice is the best course of action.
- 14 We find, on the balance of probability, it cannot be expected that the Remedial Action would be carried out within a reasonable time (reflecting the serious risk to any occupant) with or without alternative living accommodation for Mr Gibbons.
- 15 The Statutory 'operative time', being the date a prohibition order takes effect, is set out in para 14 the Schedule. In summary, it is: if this (our) order is appealed to the Lands Tribunal, the time when a decision is given on appeal which confirms the Order; or if this order is not appealed to the Lands Tribunal, the time when an appeal may be brought to the Lands Tribunal expires. Accordingly, if no application under para 35. 2006 Regulations is made to the Residential Property Tribunal for permission to appeal this order the operative date of this order is 6 February 2007.

**Conclusion:**

- 16 The Order is confirmed, save as to the 'operative time', at page 1.

T F Cooper  
Chairman



Date and the date on which reasons for this decision are given: 16 January 2007

**Schedule 1**  
**Category 1 Hazard**

This order is made under section[s] 20 [and 21] of the Housing Act 2004.

Residential property on which category 1 hazard exists:-

**Wingfield Station, Oakerthorpe, Alfreton, Derbyshire, DE55 7LJ**

**Nature of hazards:**

Damp and mould growth  
Excess cold  
Food safety  
Personal hygiene, sanitation and drainage  
Electrical hazards  
Fire  
Structural collapse

**The deficiencies giving rise to the hazard:-**

1. Inadequate heating and insulation.
2. Disrepair to the roof allowing water penetration.
3. Defective rain water goods.
4. The absence of properly designed food storage facilities.
5. The absence of smooth, easily cleaned surfaces suitable for the preparation of food.
6. The absence of a kitchen sink with a separate supply of cold drinking water and hot water.
7. lack of sufficient worktops with adjacent power sockets.
8. The absence of cooking facilities, including an oven and hob.
9. The electrical installation is out of date and does not comply with current requirements.
10. The electrical installation is in close proximity to water penetration through the roof.
11. The existing cooking facilities are sited in close proximity to flammable materials.
12. Missing internal doors allowing smoke, fumes and fire to spread.
13. Sagging, rotted and distorted roof structure.
14. Cracked and insecure chimney pots.
15. Cracked, damp and bulged ceilings.
16. Lack of suitable and safe drainage system for foul water and sewage.

The premises in relation to which prohibitions are imposed by the order:-

**Wingfield Station, Oakerthorpe, Alfreton, Derbyshire, DE55 7LJ**

**Remedial action which the authority consider would if taken in relation to the hazard, result in their revoking the order under section 25:-**

Kitchen

Provide a kitchen or kitchen area of sufficient size to safely accommodate all necessary facilities.

The kitchen fitments must be arranged such that there is an area of work surface either side of the sink bowl and an area of work surface either side of the cooker or cooker position. At least one of the work surfaces must not be less than 1 metre in length and none of the work surfaces provided to comply with the required layout shall be less than 500 mm in length.

The kitchen shall be provided with the following:-

- i. A new kitchen sink complete with drainer and secured to fixed work surfaces. The sink must be of impervious material. The sink shall be provided with adequate supplies of both hot and cold water and properly connected via a correctly sized trap to the foul drainage system.
- ii. Provide a base unit with a work surface of no less than 1m. (Any additional units must be funded by the applicant if requested)
- iii. Provide adequate work surface. Where possible, the kitchen fitments must be arranged such that there is an area of work surface to the side of the sink bowl and an area of work surface to the side of the cooker or cooker position and none of the work surfaces provided shall be less than 500 mm in length. The work surfaces should be properly fixed with mastic sealant between the work-surfaces and tiles.
- iv. Provide a 300 mm tiled splash back to all work surfaces in the kitchen. Properly fixed with tile adhesive, grouted and mastic sealant between the work-surfaces and tiles.
- v. Ensure there is a minimum of four electrical power points situated in the kitchen for the safe use of kitchen appliances.
- vi. Either a 30 amp electrical cooker point or a mains gas point must be situated to allow the installation of the cooking appliance in a safe position which will allow it to be used safely.
- vii. Provide mechanical means of ventilation to the kitchen that should provide at least one air change per hour.
- viii. The work surface, walls, floors and ceilings shall be generally non-porous and smooth to facilitate cleaning.

Provide mechanical means of ventilation to the kitchen which should provide at least one air change per hour.

Bathroom

Provide a bathroom. This must be so positioned that it can be readily accessed for use without unduly compromising the privacy of the occupants of the premises.

The bathroom must be ventilated by natural or artificial means. Provision for natural ventilation must be by an openable window which has an opening section which is at least equal in area to 1/20th of the floor area of the bathroom. If artificial ventilation is provided it must be capable of providing a minimum of three air changes per hour.

Safe and suitable provision must be made for artificial lighting in the bathroom.

Provide and fit a bath or shower, properly connected to the hot and cold water supplies and drainage system.

Provide and fit a wash hand basin and pedestal, properly connected to the hot and cold water supplies and drainage system.

Provide a tiled splash back to the bath/shower and wash hand basin. Properly fixed with tile adhesive, grouted and mastic sealant between the bath/shower and wash hand basin and the tiles.

Properly connect the existing WC to an approved for drainage system.

The room containing the water closet must not open directly and immediately onto a space intended for the storage or preparation of food.

If the water closet is not contained within the bathroom, the bathroom must be located near the room containing the water closet or be provided with a separate wash hand basin.

### Heating

Install a heating system to provide space heating installations. The system must be capable of efficiently maintaining the principal living room at 18°C and all other main habitable rooms at 16°C when the outside temperature is -1°C.

### Note:

All work must be carried out to the satisfaction of the relevant professional bodies for appliance and fuel types.

### Roof

Strip the roof. Examine and overhaul or renew roof timbers as necessary. Renew the roof covering using new felt, battens, slates or tiles as appropriate.

Prior to installation of the new roof covering steps must be taken to ensure that the roof structure is capable of supporting the superimposed load of the new roofing materials. Replace all leadwork, valley gutters and fillets as appropriate. (The jointing method between the new roof covering and any adjoining roof must be by means of a bonding gutter). Provide ventilation to the roof space to provide a minimum of 0.3% of roof area. On completion leave the new roof in a sound and weatherproof condition

Provide or top up thermal insulation to the roof-space using approved insulation material to a depth of 250mm (10 inches).

Note. The Council's Building Control Division must be contacted regarding any changes to the roof surface as Building Regulation Approval may be required. Failure to do so may jeopardise payment of a grant.

### Chimney

Rake out the area(s) of perished mortar joints to the brickwork of the chimney stacks and repoint with cement mortar.

Re-flaunch with cement mortar the chimney stacks and refix the pot(s).

Repair or renew the cracked chimney pots.

Renew the leadwork to the chimney stack ensuring that they are correctly dressed into the brickwork, wedged, properly pointed and fixed to prevent the penetration of rainwater.

### Rain Water Goods

Overhaul, clean out, repair or renew and re-align as necessary the eavesguttering. On completion leave the gutters in a sound and watertight condition and fixed so that they adequately drain the roof.

Overhaul, clean out, repair or renew as necessary the rainwater pipes. On completion leave the down-pipe in a sound and watertight condition, ensuring that it is fixed to receive the discharge of the eavesguttering.

### Windows and Doors

Re-glaze all window panes on the east elevation where broken.

Repair or replace all internal doors and frames. Replace hinges, catches, locks and handles as necessary. On completion leave the doors in efficient working order.

Repair or renew the external doors and leave them in efficient working order.

### Ceilings

Remove only the area(s) of plaster from the ceilings which is either loose, perished, unkeyed, cracked or otherwise defective. Replaster the defective area(s) with appropriate materials leaving a smooth, even surface suitable to accept decorative finish.



### Internal Walls

Remove only the area(s) of plaster from the kitchen and bathroom walls which is either loose, perished, unkeyed, cracked or otherwise defective. Prepare and re-plaster the defective area(s) with appropriate materials, leaving a smooth, even surface which is suitable to accept decorative finish.

### Drainage

Provide a suitable system for drainage of foul water from the station. This work to be done with relevant planning and building regulations approval.

### Electricity

Examine the electrical installations to the property and carry out any necessary works so as to satisfactory current regulations. Upon completion provide a satisfactory inspection certificate. This should be the full 6 page report, completed by an Approved N.I.C.E.I.C. Electrical Contractor and showing their enrolment number.

### Water

Provide a safe piped supply of hot water to the kitchen sink, bath and wash hand basin. This must be from either an adequate central source; an immersion heater or hot water cistern or from a plumbed in unit water heater which is capable of maintaining a constant flow.