



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

Case Reference : **BIR/00GL/HIN/2018/0023**

Property : **65 Henry Street, Tunstall, Stoke-on-Trent,
ST6 5HP**

Applicant : **Adeos-UK Limited**

Respondent : **City of Stoke-on-Trent**

Type of Application : **An appeal against an Improvement Notice
under paragraph 10 (1) of Schedule 1 to the
Housing Act 2004**

Tribunal Members : **Judge M K Gandham
Mr R Chumley-Roberts MCIEH, JP**

**Date and venue of
Hearing** : **Paper Determination**

Date of Decision : **9 January 2019**

DECISION

Decision

1. The Tribunal determines that the Improvement Notice dated 7th September 2018 is varied as detailed in the Appendix.

Reasons for Decision

Introduction

2. On 26th September 2018, the First-tier Tribunal (Property Chamber) received an application from Adeos-UK Limited ('the Applicant') for an appeal under Paragraph 10 of Schedule 1 to the Housing Act 2004 ('the Act'). The appeal related to an Improvement Notice dated 7th September 2018 ('the Notice'), served upon it by the City of Stoke-on-Trent ('the Respondent') relating to the property known as 65 Henry Street, Tunstall, Stoke-on-Trent, ST6 5HP ('the Property'), of which the Applicant is the freeholder.
3. On 24th April 2018, Mr Adrian Derbyshire, an Environmental Health Officer employed by the Respondent, wrote to the Applicant, confirming that he would be carrying out an inspection of the Property on 26th April 2018. The Property was inspected on that date and a copy of the defects/deficiencies was forwarded to the Applicant on 10th May 2018.
4. As the works to remedy the defects/deficiencies had not been completed by 7th September 2018, the Notice was served on the Applicant detailing, in the Schedule to the Notice, various defects. These defects were categorised as category 2 hazards in respect of Damp and Mould Growth; Fire and Personal Hygiene, Sanitation and Drainage. The Respondent served, with the Notice, a Statement of Reasons as to why the decision to take enforcement action had been taken.
5. In accordance with the Tribunal's Directions, issued on 28th September 2018, the Respondent provided a Statement of Case and bundle on 18th October 2018. A Statement of Case and bundle setting out the Applicant's case was received by the Tribunal on 19th November 2018.
6. Neither party requested an oral hearing.

The Law

7. The Act introduced a new system for the assessment of housing conditions and for the enforcement of housing standards. The Housing Health and Safety Rating System (the 'HHSRS') replaces the system imposed by the Housing Act 1985, which was based upon the concept of unfitness. The HHSRS places the emphasis on the risk to health and safety by identifying specified housing related hazards and the assessment of their seriousness

by reference to (1) the likelihood over the period of 12 months of an occurrence that could result in harm to the occupier and (2) the range of harms that could result from such an occurrence. These two factors are combined in a prescribed formula to give a numerical score for each hazard. The range of numerical scores are banded into ten hazard bands, with band A denoting the most dangerous hazards and Band J the least dangerous. Hazards in Bands A to C (which cover numerical scores of 1000 or more) are classified as ‘category 1 hazards’ and those in bands D to J (which cover numerical scores of less than 1000) are classified as ‘category 2 hazards’.

8. Where the application of the HHSRS identifies a category 1 hazard the local housing authority has a duty under section 5 (1) of the Act to take appropriate enforcement action. Section 5 (2) sets out the courses of action (which include the serving of an improvement notice) which may constitute appropriate enforcement action.
9. Where the application of the HHSRS identifies a category 2 hazard the local housing authority has a power under section 7(1) of the Act to take enforcement action. The serving of an improvement notice is one of the types of enforcement action which may be taken.
10. Section 9 of the Act requires the local authority to have regard to any guidance for the time being given by the appropriate national authority about the exercise of their functions in connection with the HHSRS. In February 2006 the Secretary of State issued ‘Housing Health and Safety Rating System – Operating Guidance’ (‘Operating Guidance’) which deals with the assessment and scoring of HHSRS hazards. At the same time the Secretary of State also issued ‘Housing Health and Safety Rating System – Enforcement Guidance’ (‘Enforcement Guidance’), which is intended to assist local housing authorities in deciding which is the most appropriate course of action under section 5 of the Act and how they should exercise their discretionary powers under section 7 of the Act.
11. The person upon whom an improvement notice is served may appeal to a First-tier Tribunal (Property Chamber) under Part 3 of Schedule 1 to the Act; and the Tribunal may confirm, quash or vary the notice.

Inspection

12. The Tribunal inspected the Property on 19th December 2018 in the presence of Mr Amblin-Lightowler, a Private Sector Enforcement Manager employed by the Respondent, and Mr Jiduwah, the current occupier and tenant of the Applicant. The Applicant did not attend and did not send a representative.
13. The Property is a small two-storey terraced house situated on Henry Street, in an area of similar properties. It has solid brick walls (improved with external solid wall insulation on the front and rear elevations) and a pitched, tiled roof. The Property fronts directly on to Henry Street and has a small paved rear yard.

14. The front door of the Property opens directly in to the front living room which leads to a kitchen, with an under stairs cupboard. To the rear of the kitchen there is a vestibule which leads to the ground floor bathroom - an addition to the house - and also a door giving access to the yard. Stairs from the kitchen lead to the first floor, which comprises a small landing with two double bedrooms – one to the front and the other to the rear of the Property. The Property is double-glazed and has the benefit of central heating.
15. The Tribunal noted that works had recently been carried out to the Property. The front living room had been re-plastered along the base of two walls, with new skirting boards along the party wall and a new doorframe leading to the kitchen. In the kitchen, three of the walls had been re-plastered at their bases, with some new skirting boards and a new frame installed on the under stairs cupboard. Because the works were recent, it was not possible for the Tribunal to obtain accurate damp readings as the walls were still drying out.
16. In the bathroom, there was a small hole in the bath, approximately 10 mm in size, which appeared to have been painted over but not enamelled. Mould was present on the walls around the bathroom window and on the ceiling, where some paint was flaking. There was also a substantial amount of mould present in the rear vestibule on the wall around the rear door.
17. On the first floor, there was mould and staining along the front elevation around the window and between the wall and the ceiling, indicating the insulation in the roof was not correct. Mould was also present on the ceiling along the rear wall elevation in the rear bedroom.
18. In relation to fire safety, there were two battery-operated smoke alarms, one situated on the ground floor between the kitchen and front living room and the other on the first floor landing. Both alarms were attached to the ceiling, although the ground floor alarm had been loosened, presumably to allow for redecoration.
19. In the rear yard, all guttering appeared to be in working order and securely attached to the walls.

Submissions

The Applicant's submissions

20. The Applicant made a number of submissions in support of his appeal against the service of the Notice. Firstly, he stated that he believed the Notice was invalid because he did not receive it until 15th September 2018. He referred to section 13 (3) of the Act, which states that:

“The notice may not require any remedial action to be started earlier than the 28th day after that on which the notice is served”.

He stated that the start date in the Notice was 8th October 2018 and, as such, he was not given the appropriate notice period.

21. In addition, the Applicant submitted that the record of the defects to the Property were not correct, in that a notice detailing the deficiencies forwarded to him on 10th May 2018, contained a number of errors. In particular, it referred to a smoke alarm being required on the second floor of the property, whereas the Property only comprised a ground and first floor.
22. The Applicant also stated that the rainwater downspouts were secured and smoke alarms were fitted in June, prior to the service of the Notice. The Applicant also contended that the cause of the mould was due to neighbour's broken roof and that the neighbour had been contacted to make the repairs.
23. The Applicant referred to the HHSRS Enforcement Guidance, in particular:

"2.16 ...Enforcement policies should take account of the circumstances and views of tenants, landlords and owners."

"2.17 ...It is based on the principle that anyone likely to be subject to formal enforcement action should receive clear explanations of what they need to do to comply and have an opportunity to resolve difficulties before formal action is taken."

and

"2.18 Where an owner or landlord agrees to take the action required by the authority it might be appropriate to wait before serving a notice unless the owner fails to start the work within a reasonable time."

24. The Applicant stated that he had never refused to make repairs but that he was unable to carry out the repairs, as the tenant had been obstructive. He stated that he had even had to contact the Respondent, for them to be involved with communications with the tenant. He provided, within his bundle, a copy of various items of correspondence with the tenant, Respondent and contractors.
25. He stated that he did not wish to carry out patch repairs and that he had contacted various builders, who were all unable to carry out work for a number of different reasons, including - that they were busy, did not work in that area or were unwilling to give a guarantee for their works. He had obtained some quotes and work was due to start in September but the tenant had refused to provide access to the builder.
26. He stated that the tenant failed to respond to his communications and was now in rent arrears and that an eviction notice had been served upon him. He did not agree with the tenant's account - that multiple builders had been contacted to carry out surveys without any work actually being

started - but, instead, stated that he felt victimised by the tenant and that it was the tenant's intimidating behaviour that was not allowing the repairs to progress.

The Respondent's submissions

27. The Respondent confirmed that they had received a complaint with regard to the poor conditions at the Property on 19th April 2018. They contacted the tenant of the property on 24th April 2018 and Mr. Derbyshire, an Environmental Health Officer within the Private Sector Housing Team, carried out an inspection of the Property on 26th April 2018.
28. The Respondent confirmed that the inspection found that there was damp and rotten door frames, together with a missing smoke alarm and loose rainwater downspouts on the rear elevation. They confirmed that their housing HHSRS Assessment identified a high category two hazard for the damp and mould and category two hazards for the missing smoke alarm and for Personal Hygiene, Sanitation and Drainage.
29. The Respondent stated that, under the Act, local authorities are given the option to take action in relation to category two hazards. The Respondent's enforcement policy gives the option for an officer to initially work informally with an owner, although the Act does not require this. The Respondent stated that, in this matter, they initially worked informally with the Applicant by sending a letter with a Schedule of Deficiencies, on 10th May 2018, giving the Applicant six weeks to complete the repairs required to the Property.
30. The Respondent stated that the Applicant called the office on 18th May 2018 and stated he was happy to carry out the repairs, which he also confirmed in writing to Mr. Derbyshire the same day.
31. The Respondent stated that between 18th May 2018 and 1st August 2018, there had been six telephone conversations with the Applicant and the tenant to try and establish a start date for the commencement of the works, but that no start date was agreed with the Applicant.
32. On 7th September 2018, the Notice was served as the repairs had not yet been completed, in particular, the largest item of disrepair - being the works to remedy the damp and mould - had not been started, nor had a start date been given. The Respondent confirmed that the operative date of the Notice was 1st October 2018 and that all works were required to be completed by 19th of November 2018. Mr Derbyshire identified that the service of an improvement notice was the most appropriate action, based on the significance of the hazard.
33. Mr. Derbyshire revisited the Property on 12th October 2018, when it was noted that none of the damp defects had been resolved and that they had, in fact, worsened since the initial inspection. The missing smoke alarm had been fitted but only one of the securing brackets required for the two

rainwater downspouts had been fixed to the wall. In addition, the rust spot in the bath had not been repaired.

34. The Respondent provided, with their bundle, a number of documents including a copy of their letter dated 10th May 2018 (detailing the deficiencies at the Property), together with a number of photographs, the HHSRS Assessment and a copy of the Certificate of Service of the Notice.
35. The Respondent confirmed that the Applicant had contacted them regarding issues with the tenant being rude and intimidating to the owner and contractor; however, they had been informed by the tenant (and received a letter from him) stating that the tenant was frustrated about the number of contractors that he had had to show around the Property, without any sign of work starting.
36. In relation to the Applicant's other submissions, the Respondent stated that the Schedule of Repairs in the Notice was the same as in the original informal letter, other than a typing error relating the reference to a second floor. They stated that the informal letter clearly detailed that an alarm was missing.
37. In relation to the rainwater downspouts, the Respondent stated that the repairs had not been fully complied with by the time of the service of the Notice and that, from their inspection at ground floor level, the neighbouring property gutter end stop appeared to be in good condition.
38. In relation to the Applicant's contention that there was insufficient warning prior to the Notice being served, the Respondent referred to their informal letter and Schedule of Deficiencies sent on 10th May 2018. The Respondent stated that they had already given the Applicant sufficient time to resolve the disrepair issues and find a suitable contractor. They stated that they had spoken the Applicant and tenant on number occasions and that no contractor had been employed to carry out the repairs to resolve the internal damp problems. Further, that autumn was approaching and that, if the Applicant failed to get the repairs completed, the Respondent wanted to undertake works prior to the worst months of winter.

The Tribunal's Deliberations

39. The Tribunal considered all of the evidence submitted by the parties written and summarised above.
40. In relation to the notice period required to carry out remedial action, the Tribunal is satisfied with the Certificate of Service contained in the Respondent's bundle. This confirmed that the Notice was served on the Applicant on 7th September 2018, providing the requisite 28 day notice period under section 13 (3) of the Act.

41. In relation to the errors in the Schedule of Deficiencies in the Respondent's letter of 10th May 2018, the Tribunal notes that this relates to the informal action carried out by the Respondent prior to the service of the Notice.
42. The Tribunal believes that the reference to the second floor is a clear typographical error. The Tribunal also notes that, although this error has been raised as an issue in the appeal, it was not referred to or queried by the Applicant in his letter to Mr Derbyshire, dated 18th May 2018, in which the Applicant confirmed that he was happy to carry out the repairs. In addition, it does not appear to have caused any confusion to the Applicant when he installed the alarms, by his own admission, in June 2018. The Tribunal also notes that the Schedule to the Notice did not contain these errors.
43. In relation to the HHSRS Enforcement Guidance referred by the Applicant, the Tribunal is satisfied that the Respondent carried out informal communications with the Applicant and the tenant prior to the service of the Notice. The Tribunal is also satisfied that the letter of 10th May 2018 set out the deficiencies in the Property with the action required to be taken to remedy the defects. The Tribunal also notes that the Respondent gave the Applicant a period of over two months prior to the service of the Notice to commence works to the remedy the damp issues at the Property. The Tribunal considers this 'a reasonable time'.
44. The Tribunal observes that there appear to have been mounting tensions between the Applicant and the tenant; however, does not consider this to be sufficient for any extension of informal communications. Although, from the evidence supplied, the Applicant had tried to obtain quotes for the works to the Property, there was no evidence of any formal instruction given to any builder to carry out the works required to remedy the damp issues prior to the service of the Notice.
45. Bearing in mind that an appeal to the Tribunal is by way of a rehearing but may be determined having regard to matters of which the local authority was unaware, it was clear that, at the time of the Tribunal's inspection, works had been carried out to the Property. Some plastering had been carried out to the front living room and kitchen, new door frames and skirting boards had been installed, together with some kitchen units. In addition, the rainwater downspouts had been secured and the Applicant had fitted the smoke alarms referred to in schedule 1.2.
46. With regard to schedule 1.3, the Tribunal does not agree with the likelihood of harm detailed in HHSRS Assessment carried out by the Respondent for the chip in the bath and does not consider this item of disrepair to be a category two hazard.
47. The Tribunal, therefore, determines that the Notice be varied as detailed in the Appendix to this decision.

Appeal

48. If either party is dissatisfied with this decision they may apply to this Tribunal for permission to appeal to the Upper tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to the parties (rule 52 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013).

M. K. GANDHAM
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Judge M. K. Gandham

APPENDIX

65 Henry Street Tunstall

Schedule 1.1 Category 2 Hazard

Nature of the hazard: - Damp and Mould Growth

The deficiencies giving rise to the hazard:-

Mould growth was present on the reveals to the opening for the rear exit door in the rear vestibule.

Mould growth was present on the ceiling and the reveals to the opening for the window in the ground floor back addition bathroom.

Mould growth and staining was present in areas on the ceiling (over the front wall), at the top of the front wall and on the reveals to the opening for the window in the first floor front bedroom.

Mould growth was present in areas on the ceiling (over the rear wall) in the first floor rear bedroom.

Nature of remedial action required to be undertaken:-

Sterilise all areas of mould growth affecting the internal surfaces within the ground floor rear vestibule, ground floor back addition bathroom and the two first floor bedrooms, using a suitable approved fungicide. Redecorate treated areas using a fungicidal painting system, with the colour matched to the existing.

Alter/amend and as necessary provide additional thermal insulation quilting in the roof space, over the junction of the ceiling and front elevation wall in the first floor front bedroom and over the junction of the ceiling and rear elevation wall, in the first floor rear bedroom. Ensure insulation quilting is passed down, as far as possible, into the front and rear eaves of the roof and provide PVC ventilation tubes as necessary, at both eaves, to ensure the roof space remains adequately ventilated.