



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

Case Reference : **LON/00AZ/HIV/2015/0002**

Property : **108, Perry Rise, London, SE23 2QP**

Applicant : **Mrs A Thapar**

Respondent : **London Borough of Lewisham**

Type of Application : **Appeal in respect of Improvement
Notices under Part 3 of Schedule 1 of
the Housing Act 2004.**

Tribunal Members : **Mrs HC Bowers MRICS
Mrs L Walters**

**Date and venue of
Determination** : **18th May 2015 at 10, Alfred Place
London, WC1E 7LR**

Date of Decision : **9th June 2015**

DECISION

The Improvement Notice is varied and is set out in Appendix 2 to this decision. The date for the completion of the works is also varied to reflect the other changes made by the Tribunal to the Notice. Actions in paragraphs 6 and 9 in Appendix 2 are to be completed by 26th June 2015. Actions as required by paragraphs 1-5, 7-8 and 10-12 are to be completed by 31st July 2015.

Introduction:

1. This matter is an application made under Part 3 of Schedule 1 of the Housing Act 2004 (the 2004 Act) dated 28th February 2015. Directions were issued on 27th March 2015 and these provided details of how evidence was to be served in this case.

The Law:

2. A summary of the relevant legal provisions is set out in the Appendix to this decision.

Background:

3. The Applicant, Mrs Thapar is registered as the freehold proprietor of 108, Perry Rise, London, SE23 2QP (the subject building) under title number LN199223. The building is divided into communal rooms and a number of individual letting rooms. At the time of the Tribunal's inspection only two of the individual rooms were noted to be occupied.
4. An Improvement Notice, dated 6th February 2015 was served upon the Applicant. Schedule 1 of the Notice identified several Category 1 and 2 hazards present at the building. This schedule provided a narrative to the deficiencies that were identified and the resulting hazards. Schedule 2 sets out the remedial actions to be taken in respect of the identified hazards. The Notice also provided some explanatory notes including the right to appeal and a statement of reasons for the service of the Improvement Notice.
5. The notice also required that works to remove or reduce the hazards are to be commenced before 6th March 2015 and to be completed by 20th March 2015.
6. Included in the papers is the hazard assessment carried out using the Northgate software. The Applicant makes no particular case against the categorisation of the hazard assessments.
7. The hazards that were identified in Schedule 1 were Damp & Mould Growth; Excess Cold; Entry by Intruders; Falls on Level Surfaces; Electrical Hazards; Fire and the Position and Operability of Amenities. It is worth noting at this stage that Damp & Mould Growth is assessed as a Band D hazard and as such is classified as a Category 2 Hazard.

Inspection:

8. The Tribunal made an inspection of the subject building on 18th May 2015. The Applicant was not present. However, the Applicant's representative

attended to provide the Tribunal with a set of keys, but did not accompany the Tribunal on its inspection. The Respondent was represented at the inspection by Ms M Angus and Mr A Lidinson. Also present at the inspection was Ms S Zoh, the occupier of the Ground Floor Front room and Ms R Edwards, the occupier of the First Floor Rear room.

9. The subject building is an inner terrace house with accommodation on the ground, first and second floors. It is of rendered brick construction with an interlocking concrete tiled roof.
10. The external rear elevation showed signs of some historic ivy growth on the building, this had been severed at a lower level and most of the vegetation had been removed, the garden was observed to be small and was overgrown, but there were signs that it had recently been cut back. It was noted that some of the tile cladding to the second floor dormer had slipped. The rear windows were timber casements are whilst in need of repair and re-decoration did not appear to form a particular hazard.
11. On the ground floor there was a rear lobby area. This had a concrete floor and housed two electrical appliances. Signs of pest control measures were observed. The external door was flimsy and seemed to be a door that was compatible for internal use only. There was a glazed panel and the door lock seemed inadequate. There was a further inner door between the rear lobby and the kitchen and this again appeared to be of a flimsy nature, but it was lockable.
12. In the kitchen it was noted that the floor had holes and the vinyl floor covering was defective. In the ground floor living room there was some evidence of an uneven floor. There was also evidence of historic damp to the ceiling. The damp appears to have occurred as a result of water damage from the first floor bathroom. In the ground floor shower room there is a shower, WC and a wash hand basin. This room has no natural light and no extractor fan. There is a water stain to the ceiling that seems to be evidence of a historic water leak from the bathroom located above on the first floor.
13. There are two rooms on the ground floor and one was used as a bedsitting room. The doors to these rooms have been replaced and although there are still some gaps at the floor level, it was acknowledged that these are fire doors and would be adequate for the current occupational arrangement in the property. The floorboards to the ground floor front room, the corridor and the reception room have some uneven areas and these require some attention.

14. In the cupboard beneath the stairs are the electrical meters and fuse boxes. The wiring in this area is haphazard. The ground floor front door is loosely fitting and the locking systems have been altered over the years and appear weakened.
15. At the first floor level the rear bedroom, that was occupied, shows signs of some rewiring work. The floorboards are slightly uneven and there is a cracked windowpane to the lower pane of the sash window system. The first floor bathroom has a bath, wash hand basin and a bidet. There is partial tiling to the room and the sealant around the bath has deteriorated. The floor is uneven. There are two windows to the side elevation but these windows are inoperable. There is a separate WC adjacent to the bathroom. This has a radiator and an operational window to the side elevation. There are signs of damp ingress at a high level. The further rooms on this level and on the second floor level are not occupied and as far as the Respondent is concerned these areas are not part of the Improvement Notice.
16. Throughout the property there were signs of a recently installed fire alarm system. However, it did not appear that this system had been fully installed or was operational. The property has a full central heating system and this was operational at the time of the inspection, but it was noted that the thermostatic control was broken.

Hearing and Representations:

17. Neither party requested a hearing. Therefore the Tribunal based its decision on the papers submitted by the parties and from the inspection carried out on 18th May 2015.

Applicants' Case:

18. The Applicant explained that the Improvement Notice was not necessary as she was taking steps to take possession of the two occupied rooms via the section 21 process. Once the property is vacant there is no intention in re-letting, but she intends to sell.
19. It was stated that previously Mrs Thapar had been informed that if the top floor was not occupied, then the property would not need a House in Multiple Occupation (HMO) licence. The Applicant has tried to deal with the local authority in a courteous and open manner.
20. Mrs Thapar referred to the history of the Respondent's involvement with the property. The bundle provided details of the past email correspondence between the parties. Defects had been listed and it was suggested that some of these defects had been rectified, including repair of the broken floorboards and the exposed electrical sockets. There had been no

involvement from the local authority from August 2014 to February 2015. At that point the Applicant had contacted the Respondent. The next communication from the Respondent had been the issue of the Improvement Notice.

21. The Improvement Notice was incorrect as it identified three tenants, whereas the Applicant states that there are only two tenants in the house, each residing with a child. There is a difficult relationship with one of the tenants and there is other litigation outstanding. The actions of one of the tenants have hindered progress on the completion of the works. It is suggested that the required works would be hazardous to young children and arrangements should be made for the families to be re-housed. The Applicant has had a number of personal issues and this has caused delays to the completion of the work. The difficulties arising from the tenant has caused financial problems and the condition of the property has deteriorated.
22. Included in the Applicant's bundle was email correspondence to show works that had been carried out including pest treatment, emergency boiler repairs, fire safety doors, electrical work including the fire and smoke detection system. A copy of a Landlord's Gas Safety Record dated 23rd May 2014 was provided, but at the time of our inspection this was out of date.

Respondent's Case:

23. In the witness statement from Mykia Angus, a Senior Technical Officer with the Respondent, there is a brief summary as to the history of this case. A site survey was carried out by Ms Angus in January 2014. At the time of that inspection there were only four tenants in the property. Accordingly, the property was not in the licencing scheme for HMOs. Following that inspection a S16 Local Government (Miscellaneous Provisions) Act 1976 (LGMP) request and a S4 Prevention of Damage by Pests Act 1949 (PDPA) notice were served. There was subsequent correspondence from Mr Mann, acting on the behalf of Mrs Thapar, regarding proposed works to the subject building. A Notice of Entry was executed on 3rd March 2014 and the inspection indicated that no works had been carried out at the property. An informal schedule of works was sent out with a copy of the Management of Houses in Multiple Occupations (England) Regulations on 18th March 2014. There was a request that the Respondent was to be provided with a copy of the gas and electrical safety certificates. These documents were not provided, but Mr Mann indicated that the subject property was being marketed for sale.

24. There was a further inspection by Ms Angus in August 2014. Although there were only three tenants in occupation, it was considered that the property had deteriorated and none of the works had been carried out. Another inspection was carried out in January 2015 and on 6th February 2015 the Improvement Notice was served, with a date of 20th March 2015 for the completion of the works. During February 2015 there was correspondence from Mr Mann indicating that S21 notices had been served and there was an intention to obtain vacant possession and to sell the property. There was a request that the Improvement Notice was withdrawn. Ms Angus re-inspected on 23rd March 2015 and it is suggested that little was done to comply with the Notice.
25. It is submitted that the Respondent is not involved with the landlord and tenant relationships at the property. In Ms Angus' opinion the correct course of action was taken, having consideration to the presence of children at the property.
26. In the exhibits attached to Ms Angus' statement were several documents including the site inspection notes and photographs that were taken on various occasions.

Tribunal Findings:

27. The Tribunal has not re-calculated the hazard assessments. This was not a point of dispute between the parties and the Tribunal does not have access to the necessary software or the necessary database to undertake these calculations. Whilst the Respondent's assessment sheets were produced, there was no supporting evidence to explain the aspect of subjective judgement that occurs in these assessments. However, as explained, the Applicant did not express any concerns on this aspect.
28. The Applicant raised several issues about the occupation of the building, her plans to sell the property and the difficult relationship between herself and the tenants. These aspects are not relevant to our consideration. It may be that circumstances change and that any works may subsequently become redundant. However, at the time of the Tribunal's inspection and determination, there were occupiers in the building and therefore it is necessary to consider the hazards that have been identified and the Respondent's proposed enforcement action. It is noted that the Improvement Notice identifies three occupiers in the building. At the time of the Tribunal's inspection it was acknowledged that there were two tenants in the house, each occupying a room with their child, meaning that there were four people in occupation of the property. To the extent that it has any impact on the work to be undertaken at the property, the persons

on whom the Improvement Notice should be served should now be limited to Mrs Tharpar, Ms Zoh and Ms Rayne.

29. The approach taken by the Tribunal was to consider each hazard and work noted in Schedules 1 and 2. As a general point the Improvement Notice is set out in very vague terms. It may be that there has been extensive communications between the parties as to what is required. However, this is not clearly explained in the Notice. This is one of the reasons that the Tribunal has determined that the Notice requires to be varied. Another factor for the variation is the recognition that the Applicant has carried out some work to the property and that the position of the Respondent has varied as a consequence of only two current occupiers in the house. The works have been re-ordered into a more logical work approach.
30. In Schedule 2 of the Improvement Notice the following changes are made under the section headed as follows:

Damp & Mould Growth

31. It appears that the signs of water staining in the property are evidence of historic problems. There are no particular areas of wet or loose plaster other than the area above the WC in the first floor WC. It appears that the water ingress to the ground floor shower room is caused from the defective fittings and mastic seals to the first floor bathroom. Therefore the defective seal around the bath (first floor bathroom) is to be removed, cleaned out and replaced with a suitable and effective mastic seal. It is accepted that there is an area of potential water ingress in the first floor WC, therefore the source of the water ingress to the wall above the WC (first floor WC) is to be investigated and remedied.
32. There is no adequate ventilation system in the ground floor shower room. Therefore paragraph 2 of the proposed remedial works is to be amended to show the location of the proposed works. Therefore the Applicant should provide and install an adequate and suitable mechanical extractor fan in the shower room (ground floor shower room), in accordance with manufacture's instructions. Adapt and extend existing electrical installation in suitable cable. Prepare, provide, fit and connect new, switched fused spur in suitable position. Connect fan, test and leave in proper working order, with proper provision for overrun.

Excess Cold

33. There is an operational central heating system in the property. The defect is that the thermostat is broken. Accordingly, the Applicant is to provide, fit and connect a new thermostatic control to the central heating system and to leave operational.

Entry by Intruders

34. The rear door is inadequate and does pose a security threat to the house and the residents. Likewise the locking facilities to the front door are not suitable to provide an adequate deterrent. Therefore the Applicant is to supply and fix securely an appropriate external door with locks to the doorway of the rear lobby and to re-fit the front door, making the frame secure and fitting with appropriate locks.

Falls on Level Surfaces

35. The floor to the kitchen and its covering are defective. There are other areas around the property where there are gaps in the floorboards that could cause tripping hazards. Therefore the Applicant is to lift the vinyl in the kitchen (ground floor), repair the holes and provide a suitable replacement floor covering. Additionally the floorboards throughout the property are to be checked and repaired to ensure no holes or tripping hazard.

Electrical Hazards

36. The electrical installations in the property appear to be inadequate and dated. Therefore the Applicant is to obtain an inspection report for the electrical installations from an NICEIC registered contractor.
37. If defective electrical works are identified it is appropriate that adequate work is undertaken to repair or renew as necessary all fittings and wiring found to be inadequate or otherwise defective. It would be appropriate for the system to be tested and with a completion certificate. A copy of the inspecting engineer's report noted in paragraph 36 must be submitted to the Respondent for approval prior to the commencement of the work.

Fire

38. There is a fire detection system in place but it appears to be disconnected. Accordingly the Applicant should ensure that the fire detection system is to be repaired, connected, tested and left fully operational.
39. The gas safety certificate expired on 23rd May 2015. It would be appropriate that the Applicant should obtain a report from a Gas Safe registered contractor on the condition of all gas appliances within the property. Provide a copy of the report and final test certificate to the appropriate Senior Technical Officer.

40. If any defective work is identified under the work carried out in accordance with paragraph 39, then the Applicant should undertake all required repairs/replacements identified in the report noted in paragraph 39 above.

Position and operability of amenities

41. Generally the windows in the building are adequate. However, the broken pane in the first floor rear room is hazardous and should be replaced. Also the timber casements to the bathroom windows (first floor bathroom) should either be eased or a mechanical extract system should be installed. This will ensure adequate ventilation in the bathroom.
42. Certain works that have been identified in the Improvement Notice are no longer required. The need for a specialist report for damp and condensation problems identified in paragraph 4 is no longer required, as there are no general damp problems and the works described above deal with the specific issues surrounding and damp or condensation problems. The Respondent has indicated at the inspection that the fire doors in situ are adequate and therefore the requirements in paragraphs 7 and 15 are no longer necessary. Likewise the Applicant has already carried out some electrical work to sockets and a defective lamp holder. Therefor the works in paragraphs 10 an 11 are no longer required.
43. The dates in the Improvement Notice are to be varied to reflect the other changes made by the Tribunal to the Notice. Actions in paragraphs 36 and 39 are to be completed by 26th June 2015. Actions as required by paragraphs 31-35, 37-38 and 40 to 42 inclusive are to be completed by 31st July 2015.

Chairman: Helen Bowers

Date: 9th June 2015

Appendix 1

Housing Act 2004 Schedule 1 PROCEDURE AND APPEALS RELATING TO IMPROVEMENT NOTICES Part 3 APPEALS RELATING TO IMPROVEMENT NOTICES Appeal against improvement notice

10

- (1) The person on whom an improvement notice is served may appeal to [the appropriate tribunal] against the notice.
- (2) Paragraphs 11 and 12 set out two specific grounds on which an appeal may be made under this paragraph, but they do not affect the generality of sub-paragraph (1).

11

- (1) An appeal may be made by a person under paragraph 10 on the ground that one or more other persons, as an owner or owners of the specified premises, ought to—
- (a) take the action concerned, or
- (b) pay the whole or part of the cost of taking that action.
- (2) Where the grounds on which an appeal is made under paragraph 10 consist of or include the ground mentioned in sub-paragraph (1), the appellant must serve a copy of his notice of appeal on the other person or persons concerned.

12

- (1) An appeal may be made by a person under paragraph 10 on the ground that one of the courses of action mentioned in sub-paragraph (2) is the best course of action in relation to the hazard in respect of which the notice was served.
- (2) The courses of action are—
- (a) making a prohibition order under section 20 or 21 of this Act;
- (b) serving a hazard awareness notice under section 28 or 29 of this Act; and
- (c) making a demolition order under section 265 of the Housing Act 1985 (c. 68).

13

- (1) The relevant person may appeal to [the appropriate tribunal] against—
- (a) a decision by the local housing authority to vary an improvement notice, or
- (b) a decision by the authority to refuse to revoke or vary an improvement notice.
- (2) In sub-paragraph (1) “*the relevant person*” means—
- (a) in relation to a decision within paragraph (a) of that provision, the person on whom the notice was served;
- (b) in relation to a decision within paragraph (b) of that provision, the person who applied for the revocation or variation.

14

- (1) Any appeal under paragraph 10 must be made within the period of 21 days beginning with the date on which the improvement notice was served in accordance with Part 1 of this Schedule.

(2) Any appeal under paragraph 13 must be made within the period of 28 days beginning with the date specified in the notice under paragraph 6 or 8 as the date on which the decision concerned was made.

(3) A [The appropriate tribunal] 1 may allow an appeal to be made to it after the end of the period mentioned in sub-paragraph (1) or (2) if it is satisfied that there is a good reason for the failure to appeal before the end of that period (and for any delay since then in applying for permission to appeal out of time).

15

(1) This paragraph applies to an appeal to [the appropriate tribunal] under paragraph 10.

(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 improvement notice.

(4) Paragraphs 16 and 17 make special provision in connection with the grounds of appeal set out in paragraphs 11 and 12.

16

(1) This paragraph applies where the grounds of appeal consist of or include that set out in paragraph 11.

(2) On the hearing of the appeal the tribunal may—

(a) vary the improvement notice so as to require the action to be taken by any owner mentioned in the notice of appeal in accordance with paragraph 11; or

(b) make such order as it considers appropriate with respect to the payment to be made by any such owner to the appellant or, where the action is taken by the local housing authority, to the authority.

(3) In the exercise of its powers under sub-paragraph (2), the tribunal must take into account, as between the appellant and any such owner—

(a) their relative interests in the premises concerned (considering both the nature of the interests and the rights and obligations arising under or by virtue of them);

(b) their relative responsibility for the state of the premises which gives rise to the need for the taking of the action concerned; and

(c) the relative degree of benefit to be derived from the taking of the action concerned.

(4) Sub-paragraph (5) applies where, by virtue of the exercise of the tribunal's powers under sub-paragraph (2), a person other than the appellant is required to take the action specified in an improvement notice.

(5) So long as that other person remains an owner of the premises to which the notice relates, he is to be regarded for the purposes of this Part as the person on whom the notice was served (in place of any other person).

17

(1) This paragraph applies where the grounds of appeal consist of or include that set out in paragraph 12.

(2) When deciding whether one of the courses of action mentioned in paragraph 12(2) is the best course of action in relation to a particular hazard,

the tribunal must have regard to any guidance given to the local housing authority under section 9.

(3) Sub-paragraph (4) applies where–

(a) an appeal under paragraph 10 is allowed against an improvement notice in respect of a particular hazard; and

(b) the reason, or one of the reasons, for allowing the appeal is that one of the courses of action mentioned in paragraph 12(2) is the best course of action in relation to that hazard.

(4) The tribunal must, if requested to do so by the appellant or the local housing authority, include in its decision a finding to that effect and identifying the course of action concerned.

18

(1) This paragraph applies to an appeal to [the appropriate tribunal] under paragraph 13.

(2) Paragraph 15(2) applies to such an appeal as it applies to an appeal under paragraph 10.

(3) The tribunal may by order confirm, reverse or vary the decision of the local housing authority.

(4) If the appeal is against a decision of the authority to refuse to revoke an improvement notice, the tribunal may make an order revoking the notice as from a date specified in the order.

19

(1) This paragraph defines “*the operative time*” for the purposes of section 15(5) (operation of improvement notices).

(2) If an appeal is made under paragraph 10 against an improvement notice which is not suspended, and a decision on the appeal is given which confirms the notice, “the operative time” is as follows–

(a) if the period within which an appeal to the [Upper Tribunal] may be brought expires without such an appeal having been brought, “the operative time” is the end of that period;

(b) if an appeal to the [Upper Tribunal] is brought, “the operative time” is the time when a decision is given on the appeal which confirms the notice.

(3) If an appeal is made under paragraph 10 against an improvement notice which is suspended, and a decision is given on the appeal which confirms the notice, “the operative time” is as follows–

(a) the time that would be the operative time under sub-paragraph (2) if the notice were not suspended, or

(b) if later, the time when the suspension ends.

(4) For the purposes of sub-paragraph (2) or (3)–

(a) the withdrawal of an appeal has the same effect as a decision which confirms the notice, and

(b) references to a decision which confirms the notice are to a decision which confirms it with or without variation.

20

(1) This paragraph defines “*the operative time*” for the purposes of section 16(7) (postponement of time when a variation of an improvement notice

comes into force).

(2) If no appeal is made under paragraph 13 before the end of the period of 28 days mentioned in paragraph 14(2), “the operative time” is the end of that period.

(3) If an appeal is made under paragraph 13 before the end of that period and a decision is given on the appeal which confirms the variation, “the operative time” is as follows—

(a) if the period within which an appeal to the [Upper Tribunal] may be brought expires without such an appeal having been brought, “the operative time” is the end of that period;

(b) if an appeal to the [Upper Tribunal] is brought, “the operative time” is the time when a decision is given on the appeal which confirms the variation.

(4) For the purposes of sub-paragraph (3)—

(a) the withdrawal of an appeal has the same effect as a decision which confirms the variation, and

(b) references to a decision which confirms the variation are to a decision which confirms it with or without variation.

Appendix 2

REMEDIAL WORKS

Damp & Mould Growth

1. a) The defective seal around the bath (first floor bathroom) is to be removed, cleaned out and replaced with a suitable and effective mastic seal.
b) The source of the water ingress to the wall above the WC (first floor WC) is to be investigated and remedied.
2. Provide and install an adequate and suitable mechanical extractor fan in the shower room (ground floor shower room), in accordance with manufacture's instructions. Adapt and extend existing electrical installation in suitable cable. Prepare, provide, fit and connect new switched fused spur in suitable position. Connect fan, test and leave in proper working order, with proper provision for overrun.

Excess Cold

3. Provide, fit and connect a new thermostatic control to the central heating system and to leave operational.

Entry by Intruders

4. a) Supply and fix securely an appropriate external door with locks to the doorway of the rear lobby.
b) Re-fit the front door, making the frame secure and fitting with appropriate locks.

Falls on Level Surfaces

5. a) The vinyl in the kitchen (ground floor) is to be lifted, the holes in the floor are to be repaired and a suitable floor covering is to be re-fitted.
b) Check and repair the floorboards throughout the property to ensure no holes or tripping hazard.

Electrical Hazards

6. Obtain an inspection report for the electrical installations from an NICEIC registered contractor.
7. Repair or renew as necessary all fittings and wiring found to be inadequate or otherwise defective. Test and leave whole in proper working order providing a completion certificate. A copy of the inspecting engineer's report noted in paragraph 6 must be submitted for approval prior to the commencement of the work

Fire

8. The fire detection system is to be repaired, connected, tested and left fully operational.
9. Obtain a report from a Gas Safe registered contractor on the condition of all gas appliances within the property. Provide a copy of the report and final test certificate to the appropriate Senior Technical Officer.
10. Undertake all required repairs/replacements identified in the report noted in paragraph 9 above.

Position and operability of amenities

11. Replace the broken windowpane in the First Floor Rear room.
12. Timber casements to the bathroom windows (first floor bathroom) to be eased to enable the windows to be safely opened and closed. Alternatively to provide a mechanical extractor fan, in accordance with manufacture's instructions. Adapt and extend existing electrical installation in suitable cable. Prepare, provide, fit and connect new, switched, fused spur in suitable position. Connect fan, test and leave in proper working order, with proper provision for overrun.