FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00AZ/HIN/2014/0013**
Property	**:**	**32 Lewisham Road, London SE13 7QR**
Applicant	**:**	**Mr S Okoye**
Representative	**:**	**In person**
Respondent	**:**	**Royal Borough of Greenwich**
Representative	**:**	**Mr B Khan, in-house lawyer**
Also present	**:**	**Mr M Skinner, Respondent's Environmental Health Officer** **Ms Uchemma (Applicant's sister)**
Type of Application	**:**	**Appeal against an Improvement Notice under the Housing Act 2004**
Tribunal Members	**:**	**Judge P Korn (Chairman)** **Mr P Roberts DipArch RIBA** **Mrs L Hart**
Date and venue of Hearing	**:**	**31st July 2013 at 10 Alfred Place, London WC1E 7LR**
Date of Decision	**:**	**22nd August 2014**

DECISION

Decisions of the tribunal

(1) The tribunal hereby confirms the improvement notice in its entirety.

(2) The Applicant's cost application is refused.

The application

1. The Applicant has appealed to the tribunal, pursuant to paragraph 10(1) of Part 3 of Schedule 1 to the Housing Act 2004 ("the 2004 Act"), against an improvement notice issued by the Respondent under sections 11 and 12 of the 2004 Act and dated 6th February 2014.

2. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

3. The Applicant appeared in person but was also assisted by his sister, Ms Uchemma, partly due to his poor eyesight. The Respondent was represented by its in-house lawyer, Mr B Khan.

The background

4. The Property is an ex-Council flat, consisting of four rooms (used as bedsits), a kitchen, a utility room, a bathroom and a separate toilet. It is common ground between the parties that both at the date of service of the improvement notice and at the date of the hearing the Property was let to four tenants.

5. The tribunal inspected the Property after the hearing in the presence of the Applicant, Mr Khan and Mr Skinner. Photographs of the property were also provided in the hearing bundle.

The improvement notice

6. The improvement notice states that the Respondent is satisfied that category 1 hazards and a category 2 hazard exist on the Property. The category 1 hazards are described as Fire Safety, Excess Cold, Electrical hazards and Uncombusted Gas and the category 2 hazard is described as Entry by Intruders. The specific issues giving rise to each alleged hazard are described in the notice, which also lists the works that the Respondent requires the Applicant to carry out.

Background to service of improvement notice

7. In written submissions the Respondent stated that it had received a complaint from one of the Applicant's tenants, in response to which Mr Skinner inspected the Property on 14th and 21st January 2014. He carried out a hazard risk calculation based on his findings in accordance with the Operating Guidance issued by the relevant Government Department and then applied the statutory Housing Health and Safety Rating System Enforcement Guidance. As a result, he determined that category 1 risks and a category 2 risk existed and that it was appropriate to serve an improvement notice.

8. As part of its analysis of the situation, the Respondent concluded that the Property was a house in multiple occupation (HMO) for the purposes of section 254(3) of the 2004 Act.

Works carried out since date of improvement notice

9. It was common ground between the parties that some of the works required by the improvement notice had been carried out since the date of the improvement notice. At the hearing, Mr Khan (with the Applicant's agreement) handed to the tribunal a list of those works which the Respondent believed were still outstanding. These works (as clarified at the hearing) are as follows:-

- ensure all fire check doors are effectively self-closing by replacing perkos with something more suitable, ideally face-mounted closers;

- ensure all fire check doors are fitted with cold smoke seals, make good the fitting of all doors currently not fitting properly and ensure all doors are hung on three pairs of pressed steel butt hinges;

- re the documented fire grade boards, ensure that the edges are protected/sealed by fitting 25mm thick beading, sealed with suitable intumescent material/paste;

- re the new mains wired alarm system, provide electrical contractor's installation, testing and commissioning certification;

- fit additional electrical sockets to each bed-sit dwelling;

- following electrical remedial works, obtain and submit a new periodic electrical installation testing and condition report;

- following remedial works to gas boiler, provide a new certificate to confirm that system has been repaired and fully checked by a Gas Safe registered contractor and is compliant and safe to use; and

- repair or replace defective locking mechanism on rear door and make it secure/lockable.

The Applicant's case

10. In written submissions, the Applicant stated that the tenant who had complained (Mr Akpotor) had done so in bad faith. The Applicant had obtained a court order for possession against Mr Akpotor and felt that his complaint was designed to delay the effect of the court order. Mr Akpotor had been turning the boiler on and off, which forced the boiler to shut down, had removed all the bulbs in the passage and had damaged the rear door.

11. The Applicant had provided the Respondent with a gas safety record/certificate valid to 30th June 2014, and he also had a contract with Valliant to maintain the boiler and central heating and a contract with British Gas to service (according to his written submissions) the boiler, electrics, central heating, plumbing and drains.

12. The Applicant also stated that he hoped to upgrade the battery fire alarms to mains electric, would be changing the doors to fire doors with thumb turn keys where necessary and would be repairing the garden door.

13. The Applicant felt that requiring him to repair items damaged by one of his tenants was wrong and unfair and that it encouraged tenants to damage things. He added that when Mr Skinner visited the Property on or about 21st January 2014 he was told by Mr Akpotor's guarantor (Mr Ofemu) that Mr Akpotor had been damaging the Property.

14. As regards the process gone through by the Respondent prior to issue of the improvement notice, the Applicant stated that he was not given any chance to correct whatever genuine problems there were. He also felt that Mr Skinner ignored his request to meet at a time when Mr Akpotor was absent. He disagreed with all the statements made by Mr Skinner regarding the boiler and uncombusted gas and stated that he would have put right any problems without the need for an improvement notice. In written submissions he described Mr Skinner as "crying more than the bereaved" and being "overzealous in the exercise of [his] powers".

15. Specifically as regards the existence or otherwise of the hazards, in written submissions the Applicant stated that there was no fire safety

risk and no electrical hazard and that the excess cold had been caused by Mr Akpotor deliberately tampering with the boiler. He also felt that serving an improvement notice was an overreaction by the Respondent and that a simple discussion would have been enough. In further written submissions the Applicant also stated that there was no uncombusted gas hazard nor any excess cold hazard.

16. Also in those further written submissions the Applicant stated that Mr Skinner had decided to serve an improvement notice without seeing him or discussing any of the issues with him. He alleged that Mr Skinner accepted Mr Akpotor's false allegations without reference to the Applicant and that photographs of the Property were taken behind the Applicant's back and not discussed with him. He accused Mr Skinner of either being ignorant or mischievous and trying to deceive.

17. At the hearing the Applicant reiterated that in his view the damage at the Property had been caused by Mr Akpotor. He, the Applicant, had been managing the Property for 14 years and knew how to take care of his own building. As regards the excess cold issue, he accepted that he had turned off the central heating but this was only because Mr Akpotor was damaging it.

18. As regards fire safety, the Applicant accepted at the hearing that it was possible that the fire doors were inadequate, but he objected to the draconian nature of the Respondent's action in serving an improvement notice. He also accepted that it would be reasonable to add another electric socket to each bedroom/bedsit.

19. As regards the back door, he felt that it was sufficient to install an internal door with a small sliding lock between the utility room and the hallway.

20. The Applicant said that he met Mr Skinner for an inspection of the Property on 22nd January 2014 but that Mr Skinner had "already made up his mind by then". He also said that some of the photographs produced by the Respondent were a surprise to him and that some of the problems had been "set up" by Mr Akpotor. As a general point, he felt that Mr Skinner should have discussed the issues with him in more detail.

21. The Applicant also objected to the fact that Mr Skinner had posted a letter through his home letterbox by hand.

22. Regarding the question of whether the Property was an HMO, the Applicant said that he thought that two of the tenants were possibly cousins and that the other two must be related and that therefore they were living as one family. He accepted that he had arranged for them each to sign a separate tenancy agreement.

The Respondent's case

23. In written submissions, Mr Skinner stated that an initial visit to the Property was made on 14th January 2014. This visit confirmed that the condition of the Property was such that some formal action would need to be taken. Therefore, a notice was served on the Applicant and on the tenants under section 239 of the 2004 Act advising them that a formal inspection would be undertaken on 21st January. The Applicant telephoned Mr Skinner on 20th January to advise that he was unable to attend on 21st January, but as the tenants had already been notified of the appointment and there was no time to make alternative arrangements with them the Applicant was informed that the inspection would go ahead as planned but that Mr Skinner would meet him at the Property on 22nd January to discuss the inspection and any problems identified.

24. The inspection identified, in Mr Skinner's view, the following hazards:-

- Fire safety – lack of protected route, inadequate alarm system, overloaded electrical sockets/extensions
- Excess cold – no working heating system
- Electrical safety – wiring faults
- Uncombusted gas – faulty boiler
- Entry by intruders – rear door defective locking mechanism.

25. At the meeting on 22nd January, the Applicant made clear his view that a particular tenant was to blame, although he intimated that he would be prepared to carry out the work after that tenant had left (the Appplicant having obtained a possession order against him). The improvement notice was served on 6th February, and then on 25th February Mr Skinner had a long telephone conversation with the Applicant regarding the notice requirements during which the Applicant continued to blame the particular tenant. Mr Skinner felt that it seemed clear that the Applicant also disagreed with the basis for the notice.

26. On 12th June 2014 Mr Skinner had another meeting at the Property with the Applicant, from which it was apparent (in Mr Skinner's view) that he had carried out some – but not all – of the required works. Mr Skinner pointed out the outstanding works and said that he would confirm this in writing, which he later did.

27. Also in written submissions, the Respondent noted that the Applicant had alleged that the improvement notice was a disproportionate measure, but the Respondent did not accept this. It had considered the option of a hazard awareness notice but stated that this would have been inadequate as it could not have required works to be done. As regards the suggestion that serving an improvement notice could encourage tenants to damage the Property, in the Respondent's view this was immaterial as the Respondent was under a statutory duty to carry out an assessment and to take enforcement action where appropriate.

28. As regards the Applicant's suggestion that an improvement notice was unnecessary as he was willing to carry out the work, the Respondent submitted that if this was the case then the Applicant agreed with the requirements of the notice. However, in any event, the Respondent felt that the Applicant's willingness to do the work was questionable. During his meeting with Mr Skinner the Applicant refused to accept responsibility for the state of the Property, instead placing the blame on Mr Akpotor, and he also wanted to defer repairs until Mr Akpotor had been evicted. Faced with an indefinite time-frame and the severity of the hazards, coupled with the Applicant's unwillingness to accept responsibility, the Respondent felt that it had little choice but to serve the improvement notice.

29. The Respondent was clear that the Property was an HMO. The Applicant did not dispute that it was a self-contained flat let to four individuals who used it as their only or main residence. The Applicant received rent and the tenants shared a kitchen and bathroom. There was a presumption that they were not living as one household, and the Applicant had failed to rebut this presumption. The tenant who left after the improvement notice was served was then replaced by another tenant, and so the Property remained an HMO.

30. Regarding the uncombusted gas, the hazard arose from the fact that the boiler was malfunctioning and had not been assessed or fixed. Also, the gas certificate relied on by the Applicant was irrelevant as the gas installations had ceased to function safely. In the Respondent's view, it was unacceptable to leave the gas facilities in an unsafe state until after Mr Akpotor had been evicted as it placed other occupiers at risk. The fact that the boiler was not working also led to the risk of excess cold.

31. In the Respondent's view, the electrical hazards were clearly detailed in the improvement notice and in photographs and the Applicant had failed adequately to challenge the Respondent's findings or their seriousness. As regards the suggestion that Mr Akpotor was responsible for all of the problems, it was not realistic to claim that he was responsible for there being an old-style consumer unit or for the neutral fault on the kitchen socket or for the lack of routine testing and maintenance.

32. The Applicant seemed to concede the need for works to remedy the fire risk and did not seem to dispute the need to fix the rear exit door.

33. The Respondent noted that some works had now been carried out by the Applicant but was of the view that there were significant items still to be complied with, either because the Applicant had not attempted to address them or had addressed them ineffectively. As a result, the Respondent was satisfied that the hazards identified in the notice still existed, save that it was accepted that the excess cold hazard had now been remedied, Mr Skinner having noted on 12th June that the central heating was in working order and the Applicant having provided a gas safety certificate at the hearing. Mr Skinner commented at the hearing that the fact that some of the works specified in the improvement notice had now been carried out simply reinforced the value of serving the notice.

34. Specifically regarding whether Mr Akpotor's guarantor had told Mr Skinner that Mr Akpotor had caused the damage, Mr Skinner did not have a clear recollection as to whether he had specifically said this; there had been an argument and Mr Skinner had tried not to get involved.

35. Mr Khan did not accept that Mr Skinner had acted in a draconian manner or was treating the Applicant differently from any other property owner. Mr Skinner served improvement notices every week and was just doing his job.

The inspection

36. The tribunal inspected the Property after the hearing. It noted difficulties in the closing of the kitchen door, unless closed from a wide open position. It also noted the uneven gap at the top of the kitchen door and other doors, as well as missing cold smoke seals and problems with paint and beading around panels. The tribunal noted the boiler and some exposed wire by the hob. The rear door and inner door were inspected, as were the number of sockets in each bedsit; the lock to the rear door was damaged and the door could not be locked shut. The smoke alarms were pointed out and noted. The bathroom and toilet were inspected, including the wiring for the lighting.

The tribunal's analysis

37. The tribunal notes the oral evidence and written submissions from the parties and has considered the copy documents provided and has also noted the information revealed by its inspection.

38. In the tribunal's view, the Respondent went through the correct processes in responding to the initial complaint, serving notices

warning the relevant parties of its intention to inspect and then carrying out the inspection. Mr Skinner accommodated the Applicant's late notification that he would be unable to attend the inspection by offering to go back to the Property the following day to meet with the Applicant.

39. The evidence indicates that the Respondent then went through a proper process to establish whether there were any hazards at the Property and, if so, how to rate those hazards and what follow-up action needed to be taken. In so doing, the evidence indicates that the Applicant carried out a risk calculation in a proper manner, applying the relevant guidance.

40. Having identified – to its satisfaction – four types of category 1 hazard (and one category 2 hazard) the Respondent was under a statutory obligation to take enforcement action, the only question (assuming the existence of category 1 hazards) being what type of enforcement action was most appropriate. The possible options are set out in section 5(2) of the 2004 Act, and neither party has argued that the Respondent (if serving a notice at all) should have served anything other than an improvement notice or a hazard awareness notice. For the avoidance of doubt, the tribunal agrees that none of the other options set out in section 5(2) would have been appropriate. A prohibition order would have deprived the Applicant of the ability to rent out the Property as a residential dwelling, and this would have been unnecessary given the availability of other remedies and therefore unfair on the Applicant. The hazards were not sufficiently serious to justify taking emergency remedial action, and the circumstances did not exist to justify making a demolition order or declaring the area in which the Property is situated to be a clearance area.

41. Whilst the Applicant was slightly unclear on this point, the tribunal understands him effectively to have been arguing that the Respondent should only have served a hazard awareness notice on him. However, it would be highly unusual for it to be appropriate for a local housing authority merely to serve a hazard awareness notice when faced with several category 1 hazards (and a category 2 hazard). The Respondent has a statutory duty to take the appropriate action, and it needs to ensure that serious hazards are remedied within a reasonable period of time. The statutory guidance does allow for the theoretical possibility that a hazard awareness notice could be an appropriate response to a category 1 hazard, but the example that it gives of such a possibility is where the type of occupant who is vulnerable to the relevant hazard is unlikely to occupy the premises in the medium to long term. That is not the position here, as all of the hazards identified pose a risk to a wide cross-section of the population including the actual occupiers.

42. The Applicant's evidence, whilst strong on emotion, contained inconsistencies and also did not properly tackle many of the pertinent

issues. On the one hand he claimed that the Respondent did not need to serve a notice on him because he would have carried out the works anyway, but then on the other hand he did not seem to accept the existence of the various hazards. He stated (albeit not consistently) that there was no fire safety risk, no electrical hazard, no uncombusted gas hazard nor any excess cold hazard. He was also very dismissive of the need to secure the rear door. At the inspection the tribunal noted the newly installed internal door with a sliding lock on the inside and noted that the lock was a very weak one more suited to a bathroom door and would not be nearly sufficient to secure the back of the Property against intruders.

43. The Applicant did not offer any real evidence to challenge the Respondent's hazard rating scores. In written submissions and at the hearing he made very personal attacks on Mr Skinner's integrity and professionalism but did not back up his serious allegations with objective facts or credible evidence relevant to the appropriateness of serving the improvement notice. Whilst he raised certain specific points, for example relating to the need for a further gas certificate, the tribunal is satisfied that Mr Skinner dealt with those points and showed them not to be proper or accurate objections to the contents of the improvement notice.

44. The tribunal has considered the correspondence between the parties in the light of the Applicant's claim that Mr Skinner has been inflexible throughout the process, but the tribunal's view is that the correspondence shows a very different picture.

45. On the question of whether the Property was an HMO at the date of service of the notice and at the date of the hearing, the tribunal agrees with the Respondent that it was. The Respondent has offered clear evidence in support of its position, whilst the tribunal found the Applicant's comments on the issue to be unclear and speculative.

46. The Applicant suggested that he should have been allowed to defer the carrying out of the works until after Mr Akpotor had vacated the Property. In the tribunal's view, whilst it was possible that Mr Akpotor had caused some of the damage this point had not been proven and in any event it was not relevant to the Respondent's statutory duty to take appropriate enforcement action in the face of the existence of several category 1 hazards. The Respondent had a duty to the current and potential future occupiers of the Property as well as to visitors, and it was reasonable for it to take the view that the tackling of these hazards – some of which clearly cannot have been caused by an occupier – could not wait until such time as Mr Akpotor vacated.

47. The tribunal found Mr Skinner's evidence to be clear and credible. The tribunal's inspection of the Property supports Mr Skinner's analysis, in that the tribunal agrees that the matters stated by him to be

outstanding are indeed still outstanding. Furthermore, the tribunal accepts Mr Skinner's view that the outstanding matters are significant and that the hazards identified in the improvement notice, with the exception of the excess cold hazard, still existed at the date of the hearing and inspection. The tribunal has been through Mr Skinner's calculations and considers them to be fair and reasonable.

48. Paragraph 15(2) of Part 3 of Schedule 1 to the 2004 Act states that *"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"*. Paragraph 15(3) of Part 3 of Schedule 1 to the 2004 Act, as well as giving the tribunal the power to confirm or quash an improvement notice, gives the tribunal the power to vary an improvement notice. The question therefore arises as to whether the fact that some of the works have now been carried out means that it would be appropriate to vary the improvement notice.

49. In the tribunal's view it would not be appropriate to vary the notice. The power to vary a notice should, in the tribunal's view, be used with caution in such circumstances. First of all it is common ground between the parties that certain works have been carried out, and there is a written record as to what has been done. Therefore there is no risk that the Applicant will be required to carry out again those works which it is agreed he has already carried out. Secondly, the only reason why those works no longer need to be done is that – following service of the notice – the Applicant has carried them out. It was correct and appropriate for the Respondent to require those works to be carried out and the tribunal does not wish – by varying the notice – to imply that those works should not have been specified. Thirdly, the issue is not that new facts have emerged since the date of the notice but simply that the Applicant has now partially complied with the notice.

50. In conclusion, the tribunal therefore accepts that there are category 1 hazards and a category 2 hazard at the Property and that the works specified in the improvement notice were reasonable and proportionate ways of addressing those hazards. The service of an improvement notice was an option available to the Respondent, and on the basis of the evidence the tribunal is satisfied that the service of an improvement notice was the most appropriate course of action available to it. The tribunal notes the arguments advanced by or on behalf of the Applicant but does not accept that they justify the quashing or varying of the improvement notice.

The tribunal's decision

51. The tribunal determines that the improvement notice be confirmed.

Cost application

52. At the end of the hearing, the Applicant made an application under paragraph 13(2) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 for the tribunal to make an order requiring the Respondent to reimburse to the Applicant the amount of the application fee and of the hearing fee paid by the Applicant to the tribunal.

53. As the tribunal has found in the Respondent's favour and considers that the Respondent has acted reasonably in serving the improvement notice and in connection with these proceedings, there is no basis for ordering it to reimburse these fees and the application is refused.

Name: Judge P. Korn **Date:** 22nd August 2014

Appendix of relevant legislation

Housing Act 2004 (as amended)

Section 5

(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) … serving an improvement notice under section 11 …

(3) If only one course of action within subsection (2) is available to the authority in relation to the hazard, they must take that course of action.

(4) 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.

Exact details of remainder of section 5 not directly in issue in this dispute.]

Section 11

(1) If (a) the local authority are satisfied that a category 1 hazard exists on any residential property, and (b) no management order is in force in relation to the premises under Chapter 1 or 2 of Part 4, serving an improvement notice 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) An improvement notice under this section is a notice requiring the person on whom it is served to take such remedial action in respect of the hazard concerned as is specified in the notice in accordance with subsections (3) to (5) and section 13.

(5) The remedial action required to be taken by the notice (a) must, as a minimum, be such as to ensure that the hazard ceases to be a category 1 hazard; but (b) may extend beyond such action.

[Exact details of remainder of section 11 not directly in issue in this dispute.]

Schedule 1, Part 3

10(1) The person on whom an improvement notice is served may appeal to the appropriate tribunal against the notice.

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.

[Exact details of remainder of Schedule 1, Part 3 not directly in issue in this dispute.]