



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

**Case Reference** : **LON/00BK/HIN/2014/0022**

**Property** : **64 Marylands Road, London W9  
2DR**

**Appellant** : **Leader Securities Limited**

**Representative** : **Ms Holly Marsh**

**Respondent** : **Westminster City Council**

**Representative** : **Mr S Hunter of counsel**

**Type of Application** : **Appeal in respect of three  
Improvement Notices under Part 3  
Schedule 1 Housing Act 2004 (the  
“Act”)**

**Tribunal Members** : **Judge Pittaway  
Ms S Coughlin MCIEH**

**Date and venue of PTR** : **10 Alfred Place, London WC1E 7LR**

**Date of Decision** : **27 October 2014**

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**DECISION**

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## **Decisions of the Tribunal**

1. The tribunal confirms the decision of Westminster City Council to issue the Improvement Notice in respect of the Common Parts
2. The tribunal confirms the decision of Westminster City Council to issue the Improvement Notice in respect of the ground floor flat, notwithstanding the parties' indicating that they were prepared to agree to this being suspended for three months.
3. The tribunal confirm the decision of Westminster County Council to issue the Improvement Notice in respect of the first floor flat, as varied at the hearing.
4. As to the timeframe for completing the works to the various parts of the Property the tribunal determines that
  - a. The works to the ground floor should be commenced within 42 days of the operative date of this decision and completed four weeks thereafter.
  - b. The works to the first floor flat and the common parts should be commenced within four and 1/2 months of the operative date of this decision and completed within four weeks thereafter.

As to the operative date the parties are referred to the reasons for the tribunal's decisions.

5. Insofar as the Demands for Recovery of Expenses are concerned, the Council having agreed that the demand in respect of the Common Parts' notice was defective the tribunal might set this demand aside. The tribunal therefore quash this demand. The tribunal uphold the demands in respect of the ground floor and first floor flats.
6. The tribunal makes no order in respect of costs.

## **Background**

1. This is an appeal by Leader Securities Limited against three improvement notices issued by Westminster City Council (the "**Council**") variously under section 11 and section 12 of the Housing Act 2004 (the "**Act**") and all dated 7 May 2014.
2. Two notices were served on the applicant in respect of Category 2 hazards at the first floor flat and second floor flat; the two notices served specifying the same hazards, namely

- 2.1. no guarding or opening limiters on sash windows with sill heights below 1100mm;
- 2.2. inadequate electrical sockets; and
- 2.3. no fire fighting equipment or independent fire detection.

With an appropriate schedule of works set out in schedule 2 of each notice.

3. One notice was served on the applicant in respect of Category 1 hazards in the common parts, namely
  - 3.1. absence of automatic fire detection;
  - 3.2. absence of emergency lighting to the first floor landing
  - 3.3. lack of self-closers, intumescent fire seals and cold smoke seals to flat entrance doors; and
  - 3.4. disrepair and holed ceiling plaster from water penetration on the first floor communal area, resulting in the half-hour fire resistance of the stairway being compromised.

The letter from the council to the applicant sending this notice refers to identical notices having been served on the leaseholders of the basement flat and 2<sup>nd</sup>/3<sup>rd</sup> floor maisonette. These are not included in this appeal.

4. The appeal is dated 29 May 2014, received by the tribunal on 30 May 2014 and is made under paragraph 10 of Schedule 1 of the Act.
5. Directions were issued on 3 July 2014.
6. The applicant having informed the tribunal of the names of the occupants/tenants likely to be affected by any remedial works the tribunal informed them of this appeal and gave them the opportunity to join as a party so their representations might be taken into account but no one asked to be so joined.
7. The tribunal had before it bundles prepared by both the applicant and respondent

### **Inspection**

The tribunal inspected the property at 10 a.m. on the morning of the hearing Mr Hunter and Ms Ampofo attended on behalf of the Respondent and Ms Marsh and her father attended on behalf of the appellant. We had access to the common parts and to the ground floor and first floor flats. We did not have access to the basement or first floor flats and so were also unable to view the rear of the property.

The property is a four storey house which has been part converted into flats. The basement has its own separate entrance at the front of the property and sole use of the garden. The main front door of the house gives access to the other three units. On the ground floor is a self-contained flat which is now empty and being renovated. The common staircase leads up to a back addition level. The kitchen and bathroom of the first floor unit are located here. A lobby has been constructed between the kitchen and the landing at some point in the past. On the first floor are three doors. One is at the base of the next flight of stairs and is the door to the second floor flat. A second door leads into a bedroom for the first floor unit. This room had again been lobbied at some stage however the inner door is now missing. A third door leads into a lobby from which the front living room and a small second bedroom are accessed.

### **Ground floor flat**

Although in the process of rewiring it was evident that the pre-existing electrical circuit had a very limited number of socket outlets. Windows to the main room were timber sliding sashes with sill height of less than 1 meter and no opening restrainers. Externally the fall is one storey onto hard surfaces. There was no fire detection or fire blankets.

### **First floor flat**

The first floor flat was occupied by Mr and Mrs Forry, an elderly couple.

Hazards were similar to the ground floor flat, however the fuse box of the flat was marked as having failed an electrical inspection in December 2013. In the living room one double socket outlet was in use with adapters and extension leads. The flat has no means of fixed heating. Electric fires appear to be the sole means of heating the flat; although a bottled gas heater was present in the main bedroom.

It was noted that the door between the kitchen and its lobby was propped open and that an additional door wedge was on the floor of the lobby indicating that the outer door was also probably left wedged at some stage during the day.

### **Common Parts**

The common parts were in poor decorative condition and there was damaged ceiling plaster at the half landing level. There was no fire detection system and none of the doors had smoke seals or intumescent strips. Although some doors were fitted with self closers many were not operating effectively.

### **Submissions**

1. Mr Hunter for the respondent referred the tribunal to calculations in the respondents' bundle to substantiate that the hazards were respectively

category 2 (ground and first floor flats) and 1 (common parts) hazards. During the course of the hearing Ms Ampofo, an Environmental Health Enforcement Officer at the Council (whose witness statement was in the respondent's bundle) conceded that if the works currently being undertaken at the ground floor flat had been commenced at the time the improvement notices were served the council might have served a suspended improvement notice in relation to the ground floor flat and were prepared to agree that at this stage. She submitted that reference to the falls between levels in relation to the first floor flat improvement notice was intended to refer only to the sash windows in the first floor living room and reference to them could be omitted from the improvement notice.

For the applicant Ms Marsh queried whether there was any need for further electrical sockets in the first floor flat. It was common ground that there was one double socket in each room at the flat. Ms Ampofo submitted that the ideal was two double sockets, with particular reference to the inconvenience of there being only one double socket in the kitchen. Ms Marsh made the distinction between what the ideal position would be and what constituted a hazard.

Insofar as the fire safety works for the first floor flat were concerned Ms Marsh submitted that the scheduled works for this flat were an unnecessary duplication of the work specified in the scheduled fire safety works to the first floor common parts. Ms Ampofo did not agree asserting that even if the required works had already existed in the common parts when the notices had been served the fire safety works to the first floor flat would still have been required. The Council had consulted with the London Fire Brigade in establishing the fire safety works required. She also referred the tribunal to the BSI Standards Publication BS5839 Code of Practice for design, installation, commissioning and maintenance of fire detection and fire alarm systems in domestic premises to substantiate the level of work required and to LaCors Guidance on Fire Safety.

2. Ms Marsh questioned generally the appropriateness of the Council serving improvement notices, on the basis that the required works formed part of a larger schedule of works contemplated by the Respondent. She further queried whether they were appropriate when the Respondent was seeking to deal with the required works to the first floor sensitively given the tenants' expressed preference for no works to be carried out to their flat.

She considered that a more appropriate course of action would have been to serve suspended Hazard Awareness Notices in respect of the first floor and common parts. She did not consider that the Respondents should have taken any action in respect of the ground floor where it should have been clear that the Respondent intended to carry out work as soon as the flat was vacated.

The Respondent accepted that they had been told that works would be done to the ground floor but submitted that they had not been told what these were going to be. Having had the opportunity of inspecting the works for the first time on the date of the Hearing Ms Ampofo offered to suspend the notice in respect of the ground floor for two to three months.

3. Ms Marsh conceded that the categorization of hazards as Grade 1 or Grade 2 was outside her area of expertise.
4. As to the time frame for complying with the improvement notices
  - 4.1. Ms Marsh submitted, and the tribunal's inspection confirmed, that works were being carried out to the ground floor at the date of the hearing. Ms Ampofo offered to suspend the notice in respect of the ground floor for three months. Ms Marsh was prepared to agree to this proposal.
  - 4.2. No submissions were made to the tribunal as to the time frame for complying with the notice in respect of the common parts; and
  - 4.3. Insofar as the first floor flat is concerned Ms Marsh submissions went to whether the tenants wanted the works carried out rather than the time frame for undertaking the works.
5. As for the Council's demands for recovery of expenses in serving the improvement notices under section 49 of the Act the Respondent accepted the Applicant's intention to appeal against all of these. The actual breakdown of these expenses was considered and the Respondent explained that they did not involve any element of double counting. The council accepted that the demand in relation to the common parts was defective.

### **Reasons for the Tribunal's determination**

1. With the exception of the first floor flat living room window (which the Council requested be removed from the Notice and to which request the tribunal consent) the tribunal find that the hazards set out in the schedules to the Notices exist.
2. In the absence of any evidence to the contrary the tribunal accept that the category attributed to each hazard is that set out in paragraph 2 of each of the notices.
3. The tribunal was satisfied that, given the nature and category of the hazards identified in each notice, the Council was entitled to serve Improvement Notices. The Act requires the Council to take the action they consider most appropriate, where there is more than one course of action open to them, and the Council had decided that the appropriate action was to serve Improvement Notices rather than Hazard Awareness Notices. The Applicant had provided no evidence to substantiate her contention that suspended Hazard Awareness Notices would have been more appropriate.

The tribunal accept that the first floor tenants do not want works to be carried out to their flat. However the tribunal consider that the danger to other occupiers of the property of a fire breaking out in this flat and the defects in the electrical installation are so dangerous that the work must be carried out.

4. The tribunal noted Ms Ampofo's offer to suspend the notice relating to the ground floor for three months (to which the Applicant agreed) but did not consider such suspension to be necessary or appropriate. The works to the ground floor flat having been commenced the tribunal determines that the time periods as stated on the notice i.e. works be commenced within 42 days and completed four weeks thereafter should be confirmed. The time will start to run when the appeal period from this decision has expired Since Ms Marsh has informed the tribunal that the works will be completed within 2 to 3 months this should not inconvenience the Applicant.
5. Insofar as the timeframe for the works required to the common parts are concerned the tribunal determines that this should remain as contemplated by the original improvement notice, namely that the works be commenced within 4 ½ months of the new operative date of the notice, which allows a period of 21 days for an appeal to the Upper Tribunal and completed four weeks thereafter.
6. Insofar as the timeframe for the remaining works required by the first floor Improvement Notice is concerned, and mindful of the tenants reluctance to have the works done, the tribunal consider that it would be appropriate to carry out the work contemporaneously with the works to the common parts and therefore determine that these should be commenced and carried out in the same time frame as specified for the common parts in paragraph 5. Above. This will enable the Respondent, who is clearly concerned about the tenants' welfare to facilitate a temporary or permanent move to the refurbished ground floor flat.
7. Insofar as the Demands for Recovery of Expenses are concerned the Council are entitled to charge for serving improvement notices and in the absence of any challenge the tribunal approve the sums demanded in the Demands relating to the ground and first floors. The tribunal approve the withdrawal of the demand in respect of the common parts.
8. The tribunal did not consider that the Applicant had acted unreasonably in bringing the proceedings and therefore made no order for costs.

**Name:**

**Judge Pittaway**

**Date: 27  
October 2014**

## THE LAW

### Housing Act 2004

#### **S5 Category 1 hazards: general duty to take enforcement action**

- (1) If a local housing authority consider that a category 1 hazard exists on any residential premises, they must take the appropriate enforcement action in relation to the hazard.
- (2) In subsection (1) "the appropriate enforcement action" means whichever of the following courses of action is indicated by subsection (3) or (4)-
  - (a) serving an improvement notice under section 11;
  - (b) making a prohibition order under section 20;
  - (c) serving a hazard awareness notice under section 28;
  - (d) taking emergency remedial action under section 40;
  - (e) making an emergency prohibition order under section 43;
  - (f) making a demolition order under subsection (1) or (2) of section 265 of the Housing Act 1985 (c. 68);
  - (g) declaring the area in which the premises concerned are situated to be a clearance area by virtue of section 289(2) of that Act.
- (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.

#### **S7 Category 2 hazards: powers to take enforcement action**

- (1) The provisions mentioned in subsection (2) confer power on a local housing authority to take particular kinds of enforcement action in cases where they consider that a category 2 hazard exists on residential premises.
- (2) The provisions are-
  - (a) section 12 (power to serve an improvement notice),
  - (b) section 21 (power to make a prohibition order),
  - (c) section 29 (power to serve a hazard awareness notice),
  - (d) section 265(3) and (4) of the Housing Act 1985 (power to make a demolition order), and
  - (e) section 289(2ZB) of that Act (power to make a slum clearance declaration).

#### **S11 Improvement notices relating to category 1 hazards: duty of authority to serve notice**

- (1) If-
  - (a) the local housing authority are satisfied that a category 1 hazard exists on any residential premises, and
  - (b) no management order is in force in relation to the premises under Chapter 1 or 2 of Part 4,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.
- (3) The notice may require remedial action to be taken in relation to the following premises-
  - (a) if the residential premises on which the hazard exists are a dwelling or HMO which is not a flat, it may require such action to be taken in relation to the dwelling or HMO;



- (b) if those premises are one or more flats, it may require such action to be taken in relation to the building containing the flat or flats (or any part of the building) or any external common parts;
  - (c) if those premises are the common parts of a building containing one or more flats, it may require such action to be taken in relation to the building (or any part of the building) or any external common parts.
- Paragraphs (b) and (c) are subject to subsection (4).
- (4) The notice may not, by virtue of subsection (3)(b) or (c), require any remedial action to be taken in relation to any part of the building or its external common parts that is not included in any residential premises on which the hazard exists, unless the authority are satisfied-
    - (a) that the deficiency from which the hazard arises is situated there, and
    - (b) that it is necessary for the action to be so taken in order to protect the health or safety of any actual or potential occupiers of one or more of the flats.
  - (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.
  - (6) An improvement notice under this section may relate to more than one category 1 hazard on the same premises or in the same building containing one or more flats.
  - (7) The operation of an improvement notice under this section may be suspended in accordance with [section 14](#).
  - (8) In this Part "remedial action", in relation to a hazard, means action (whether in the form of carrying out works or otherwise) which, in the opinion of the local housing authority, will remove or reduce the hazard.

#### **S12 Improvement notices relating to category 2 hazards: power of authority to serve notice**

- (1) If-
  - (a) the local housing authority are satisfied that a category 2 hazard exists on any residential premises, and
  - (b) no management order is in force in relation to the premises under Chapter 1 or 2 of Part 4,
 the authority may serve an improvement notice under this section in respect of the hazard.
- (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 subsection (3) and [section 13](#).
- (3) [Subsections \(3\) and \(4\) of section 11](#) apply to an improvement notice under this section as they apply to one under that section.
- (4) An improvement notice under this section may relate to more than one category 2 hazard on the same premises or in the same building containing one or more flats.
- (5) An improvement notice under this section may be combined in one document with a notice under [section 11](#) where they require remedial action to be taken in relation to the same premises.
- (6) The operation of an improvement notice under this section may be suspended in accordance with [section 14](#).

#### **S49 Power to charge for certain enforcement action**

- (1) A local housing authority may make such reasonable charge as they consider appropriate as a means of recovering certain administrative and other expenses incurred by them in-
  - (a) serving an improvement notice under [section 11 or 12](#);
  - (b) making a prohibition order under [section 20 or 21](#);
  - (c) serving a hazard awareness notice under [section 28 or 29](#);
  - (d) taking emergency remedial action under [section 40](#);
  - (e) making an emergency prohibition order under [section 43](#); or
  - (f) making a demolition order under [section 265](#) of the Housing Act 1985 (c. 68).

- (2) The expenses are, in the case of the service of an improvement notice or a hazard awareness notice, the expenses incurred in-
  - (a) determining whether to serve the notice,
  - (b) identifying any action to be specified in the notice, and
  - (c) serving the notice

**Para 10**

- (1) The person on whom an improvement notice is served may appeal to a residential property 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).