FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AL/HIN/2014/0012**
Property	**:**	**1A &1B Plumstead Common Road, London SE18 3AP**
Applicant	**:**	**Mr Kartar Singh Gill**
Representative	**:**	**Mr Gurmail Gill (his son)**
Respondent	**:**	**Royal Borough of Greenwich**
Representative	**:**	**Mr Robert Fitt, counsel**
Type of application	**:**	**Appeal in respect of an Improvement Notice**
Tribunal member(s)	**:**	**Judge Timothy Powell** **Ms Susan Coughlin MCIEH** **Mrs Rosemary Turner JP BA**
Date of and venue of hearing	**:**	**6 June 2014 at** **10 Alfred Place, London WC1E 7LR**
Date of decision	**:**	**17 June 2014**

DECISION

The Tribunal's decisions

(1) The Tribunal quashes the two improvement notices served on the applicant, and the two accompanying demands for payment in respect of enforcement action;

(2) The Tribunal directs the Royal Borough of Greenwich to refund £310 to Mr Gill in respect of the application fees which he has incurred in respect of the appeal; and

(3) The Tribunal makes no other order in relation to costs.

Background

1. The appellant Mr K Gill owns the building at 1 Plumstead Common Road, London SE18 3AP, which comprises four self-contained flats in a semi-detached Victorian property, apparently converted some years ago.

2. Following a complaint concerning mould growth and general poor housing conditions received on 16 September 2013, Mr Heatlie, an environmental health officer employed by Greenwich council, inspected two of the flats in the building, Flats 1A and 1B Plumstead Common Road, and produced a list of defects that needed to be addressed by Mr Gill. After meetings and correspondence, notices of entry under section 239 of the Housing Act 2004 were served on Mr Gill on 24 February 2014, followed by a formal inspection of housing conditions in Flats 1A and 1B on 3 March 2014.

3. By letter dated 12 March 2014, two improvement notices were posted by Mr Heatlie to Mr Gill, along with two demands for payment of administration charges in respect of the enforcement action taken by the council, in the sum of £204.95 and £213.58 respectively.

4. The schedules to the improvement notices revealed that the council had identified the following hazards at the property:

   (a) In respect of Flat 1A, a category 1 hazard relating to inadequate guarding to the garden area, where there was a substantial drop to the neighbouring garden; and three category 2 hazards relating to the electrical systems (a hole above the electrical socket), fire risk (the heat detector in the kitchen being inoperative) and damp and mould growth to the bathroom and bedroom;

   (b) In respect of Flat 1B, three category 1 hazards, namely: extensive dampness and mould growth, the need for the occupier to stretch over the top of a gas cooker to access work

surfaces and inadequate guarding to the front garden, where there was another significant drop to the neighbouring garden. There were also three category 2 hazards, namely: structural collapse and falling elements (a radiator in the lounge which had come off the wall), fire hazard (in that the heat detector in the kitchen and the smoke detector in the lounge were missing) and falling on level surfaces (a broken floor board in the kitchen floor).

5. In each case, the improvement notices provided that "the date on which the remedial action is to be started is no later than 11 April 2014".

6. Mr Gill submitted two appeals against the two improvement notices, both received by the Tribunal on 1 April 2014. Directions were given which resulted in two hearing bundles being prepared, one by Mr Gill and one by the council, both of which contained coloured photographs of the alleged defects.

The hearing

7. The hearing of the appeal took place on the 6 June 2014. Mr Gill was represented by his son, Mr Gurmail Gill. Greenwich council was represented by Mr Robert Fitt of counsel. Also in attendance were Mr Heatlie, the environmental health officer, and Ms Douglas from the council's legal department.

8. At the outset of the hearing, Mr Fitt explained and Mr Gill agreed that there were no remaining issues in relation to Flat 1A. This was because Mr K Gill had carried out work since lodging his appeal and the council was satisfied that the works carried out were satisfactory.

9. With regard to Flat 1B, similar works had taken place, with the result that there were now only two outstanding issues, namely fencing to the front garden which was still necessary, and the reconfiguration of the kitchen area to remove the category 1 hazard, which had not yet been agreed; although Mr Gill had proposals in respect of each.

10. With regard to the fencing, Mr Gill confirmed that his father would erect fencing to the front garden within 14 days of the date of the hearing and, to the extent necessary, both parties agreed to the variation of the improvement notice to allow for this. With regard to the kitchen area, Mr Gill had made proposals, but the council felt the proposed changes would only create other hazards, in particular a food safety issue.

11. Before the Tribunal began to hear evidence in relation to the category 1 hazard in the kitchen area of Flat 1B, Mr Gill challenged the validity of the improvement notices.

Validity of the improvement notices

12. In the original application form, the first ground of appeal was that the improvement notices had been served incorrectly, as the date of posting of the covering letter and the date of service were both dated the same. At paragraph 17 of his witness statement, Mr Gurmail Gill stated: "I believe the improvement notice is defective and invalid as the date of service is incorrect when compared to the date of posting. I therefore do not believe the Council are entitled to their costs of the notice."

13. At the hearing, Mr Gill made further oral submissions and drew the Tribunal's attention to the relevant documents in his bundle. He also produced and relied upon an extract from the Housing, Health and Safety Rating System (HHSRS) Enforcement Guidance. He complained, first, that the front page of the improvement notices contained an "operative date" of 2 April 2014 and, secondly, that the schedule to the notices required remedial action to be started "no later then 11 April 2014."

14. For the council, Mr Fitt submitted that the improvement notices were served on 12 March 2014, being the date of posting of the letters to Mr K Gill and that, therefore, both the "operative date" (which specifies the 21-day period for an appeal to be submitted) and the date for the commencement of works were correct (being 21 and 30 days after 12 March, respectively) and there was nothing in those dates to invalidate the notices.

The Tribunal's decision

15. The Tribunal determines that the improvement notices are defective and therefore invalid and it quashes both notices, together with the linked demands for payment in respect of enforcement action.

Reasons for the Tribunal's decision

16. The Tribunal is happy to accept that the council posted the two improvement notices to Mr Gill on Wednesday, 12 March 2014. There is no evidence as to the date that such notices were received, though Mr Gurmail Gill suggested that the notices had not come to his father's attention until Monday, 17 March 2014.

17. In the absence of evidence to the contrary, the Tribunal must rely upon the deemed postal service rules. Section 7 of the Interpretation

Act 1978 states: "Where an Act authorises or requires any document to be served by post (whether the expression "serve" or the expression "give" or "send" or any other expression is used) then, unless the contrary intention appears, the service is deemed to be effected by properly addressing, pre-paying and posting a letter containing the document and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post".

18. The Tribunal accepts Mr Gill's submission that letters sent by first class post are deemed to be received on the second working day after posting. Although the Civil Procedure Rules (CPR) 1998 do not apply to the Tribunal proceedings, it is noteworthy that, by CPR Part 6.26, a document served within the United Kingdom by first class post (or other service which provides delivery on the next business day) is deemed to be served on "the second day after it was posted, left with, delivered to or collected by the relevant service provider provided that day is a business day; or if not, the next business day after that" [emphasis added].

19. It appears that the CPR mirror the earlier Practice Direction in the Queen's Bench Division, dated 8 March 1985, which provided that: "to avoid uncertainty as to the date of service it will be taken (subject to proof to the contrary) that delivery in the ordinary course of post was effected: (a) in the case of first class mail, on the second working day after posting …".

20. In the present case, a first class letter sent to Mr Gill on Wednesday, 12 March 2014 is deemed to have been served on Friday, 14 March 2014.

21. It follows, therefore, that the improvement notices were incorrect to state that the "operative date" was Wednesday, 2 April 2014, since that would suggest to the recipient, Mr Gill, that he had less than 21 days in which to lodge an appeal with this Tribunal.

22. The failure to give 21 days notice would appear to be a defect, in that it does not comply with section 13(4) of the Housing Act 2004, which states that: "the notice must contain information about –… (b) the period within which an appeal may be made". However, that may not matter so much in the present case, since Mr Gill's appeal was received by the Tribunal within time, on 1 April 2014.

23. Of greater concern is the requirement in section 13(2) of the Housing Act 2004, which states that: "the notice must specify …. (e) the date when the remedial action is to be started (see sub section (3)) …"

24. Section 13(3) clarifies 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."

25. In the present case, the improvement notices were deemed served on Friday, 14 March 2014 and the schedules each stated that "the date on which the remedial work is to be started is no later than 11 April 2014" - also a Friday.

26. Friday, 11 April 2014 is the 28th day after the deemed service of the improvement notices on Friday, 14 March 2014, but a combination of subsections 13(2) and (3) mean that the earliest date on which any remedial action may be required to be started was Saturday, 12 April 2014, i.e. on the 29th day after the day on which the notice is served.

27. It is extremely unfortunate that the council gave itself no leeway at all in relation to dates. There is no reason why such a tight time scale should have been given to Mr Gill to begin the works. Had the council simply provided a slightly longer period, say 35 days after service of the notices, there would have been no question of a challenge to the validity of the notices for this reason.

28. However, given the challenge to the notices in the application form, the succinct presentation by Mr Gurmail Gill at the hearing and the mandatory terms of sections 13(2) and (3) of the 2004 Act, the Tribunal is led to the inevitable conclusion that the improvement notices were defective and invalid, and the Tribunal must therefore quash them.

29. It follows that the demands for payment of charges for the council's enforcement action fall with the improvement notices.

30. Having notified the parties orally of its decision at the hearing, the Tribunal expressed the view that Mr Gill should keep to his earlier assurance that he would erect safe fencing to the front garden of Flat 1B within 14 days. The Tribunal also indicated that the parties should meet to discuss the proposals to remove the category 1 hazard that is apparently presented by the situation of the gas cooker in Flat 1B. Clearly, if a mutual acceptable compromise cannot be reached, the council may consider serving a fresh improvement notice in respect of this hazard.

31. Although the council may well be disappointed that the Tribunal has quashed the improvement notices, it remains the fact that they have been effective in apparently stimulating Mr Gill into carrying out works to remove all the other hazards at the two flats.

Application for costs and a refund of fees

32. Mr Gill said that his father had paid £300 in respect of the fees for lodging the two appeals, but a later examination of the Tribunal's file showed that he had in fact paid £310. Mr Gill applied for a refund of the fees paid and £50 in respect of his father's photocopying costs. Mr Fitt for the council left the decision to the Tribunal.

33. The Tribunal's very limited powers to award costs are contained within rule 13(1) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. In the present case, there is no reason to award wasted costs against the council's representative and there is no evidence of the council having "acted unreasonably in the bringing, defending or conducting proceedings." Accordingly, the tribunal makes no award in respect of the applicant's photocopying costs.

34. However, given the outcome of the appeal and in accordance with its power under the rule 13(2) of the procedure rules, the Tribunal makes an order requiring the council to reimburse Mr Gill the whole amount of the fees paid by him, namely £310, within 21 days of the date of this decision.

Name: Judge Timothy Powell **Date:** 17 June 2014