



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

Case Reference : **BIR/17UG/HIN/2019/0005**

Property : **10 Byron Street, Ilkeston DE7 5JG**

Applicant : **Mr K.P. Dimaline**

Respondent : **Erewash Borough Council**

Representative : **Ms Danielle Hughes**

Type of Application : **Housing Act 2004 – Schedule 1 Paragraph 10 (1)**

Tribunal Members : **Mrs A Rawlence MRICS
Mr R Chumley-Roberts MCIEH J.P.**

Date of Decision : **12 August 2019**

Order : **The improvement notice in relation to 10 Byron Street, Ilkeston is part confirmed; part quashed and part varied.**

DECISION

Application.

1. The Applicant appealed, under Schedule 1, Paragraph 10 of the Housing Act 2004 (“the Act”) against an improvement notice relating to the property that comprises the residential accommodation at 10 Byron Street, Ilkeston, DE7 5JG (“the Property”). The notice was served by Erewash Borough Council, the local housing authority (“the Authority/Respondent”). It is dated 18 April 2019 and is made under sections 11 and 12 of the Act, requiring certain works to be carried out to the Property to remedy hazards referred to in the Notice. The Appeal lodged on behalf of the Appellant is dated 8 May 2019, which is a date before the notice was to have taken effect.
2. Under Section 14, the operation of the notice was to take effect no later than the 22nd day after the day that the dwelling is occupied.
3. The improvement notice is one of the courses of action that the Authority may take in order to seek to remedy the hazards identified and the Authority has given reasons why this is the course of action chosen.
4. The provisions of Paragraph 10 of Schedule 1 provide for the person on whom an improvement notice is served to have the right to appeal to a Residential Property Tribunal and although setting out certain specific grounds of appeal they do not restrict the overall generality of the paragraph. Thereafter a combination of Paragraphs 12 and 15 envisage an appeal by way of re-hearing, admitting matters not previously considered, to allow the Tribunal to confirm, vary, or quash the Notice.
5. Directions as to the future conduct of the appeal was given by a Deputy Regional Judge of the Tribunal and the matter then listed for the consideration of the Tribunal on 5 August 2019.

The Improvement Notice.

6. The Authority was satisfied that within the property there existed one category 1 hazard within the meaning of the Act, relating to the Property.
7. The category 1 hazard was:

Housing Health & Safety Rating System (HHSRS) Hazard Profile No 2
Excess Cold

Construction of the rear extension/lean to enclosing the kitchen and bathroom prevented this area from being capable of efficiently and economically raising temperatures to 18 degrees C in the kitchen and 22 degrees C in the bathroom.

A leak to the roof light would also reduce ambient temperatures

Remedial action:

Carry out works to the external wall and floor where the kitchen is located to ensure that these areas comply with current Building Regulations.

Apply suitable thermal insulation to the separating wall between the kitchen base units in the lean to and the shared access/ginnel at the rear of the property.

Works also likely to be required under Building Regulations to the wall structure and stability.

The roof lights in the lean-to to be replacement with an approved covering in accordance with the relevant approved documents under the Building Regulations, leaving all in a sound and watertight condition.

Any replacement units must either be installed by a registered FENSA contractor or another contractor following submission of a building notice to the Building Control Team. On completion a copy of the relevant certificate to be submitted to the Council.

8. The Authority was satisfied that within the property there existed a category 2 hazard within the meaning of the Act, relating to the Property.

9. The category 2 hazard was:

HHSRS Hazard Profile No 1 Damp and Mould

The roof covering to the main roof front and rear of the property showed signs of deterioration. Although this was not causing any identifiable damp, at this point in time, in the course of the next 12 months it was likely to do so.

10. Remedial action: Overall the front and rear roof slopes' re-fix or renew any missing, loose, broken or otherwise defective slates.

Inspect all associated fillets, soakers, flashing and roof gutters and repair, redress or renew as necessary.

Inspect all timbers and repair or renew all defective members as necessary using sound treated timber of similar dimensions to match existing.

Leaving the whole roof in a sound, weatherproof and watertight condition upon completion.

Inspection.

11. The property was inspected on 5 August with the Applicant's wife and an officer from Erewash Borough Council in attendance.

12. The property is situated fairly close to the town centre with its shops and facilities.

13. This property is a two storey, solid brick built, two bedroom, two rooms deep, terraced house, with a right hand entry. The property has original, narrow, ground floor rear addition and rear addition extensions, the width of which has been extended by the enclosure of part of the rear yard, with the right hand garden wall being extended in height and a sloping, single glazed lean to roof being constructed, from the original back addition and extension right flank walls, to meet it.
14. The accommodation is entered direct into the ground floor front room which provides direct access to the ground floor rear room. The ground floor rear room provides access to the extended ground floor rear addition which contains a front kitchen, a bathroom in the original rear addition extension on the left hand side and a "lobby" on the right hand side. A stairway rises up from the ground floor rear room to serve the first floor front and rear bedrooms. Rear access to the garden is via a door in the rear wall of the addition. During the inspection the Tribunal noted that the first floor of the rear addition was connected to the adjacent left hand property (number 9 Byron Street) and was not part of this house.
15. The external walls of the main structure and most of the rear addition are constructed with 225mm solid brickwork, with the internal surfaces formed from hard plaster. The top six courses of brickwork on the extended right hand garden wall which forms the "lobby" area enclosing the kitchen, is formed of 112.5mm (i.e. half brick) brickwork with plaster finish.
16. The main roof of the house is of "up and over" pitch construction with the slopes covered by natural slates whilst the back addition extension roof (over the bathroom) is flat and covered by roofing felt. The lobby has a Georgian wired glass covering.
17. The floors in the ground floor rear room and the rear addition appear to be of concrete construction whilst the flooring in the ground floor front room and all the floors at first floor level are of suspended timber construction. The windows within the property are all PVC double glazed casement units with top hung opening lights, apart from the two small single glazed timber casement units provided near the top of the extended right hand garden wall enclosing the rear addition "lobby".
18. The heating to this dwelling is provided by a full gas fired, "wet rad" central heating system, powered by a wall mounted boiler located in a cupboard in the first floor rear bedroom and serving radiators in all the rooms.
19. The design detail of the property is consistent with those constructed circa 1900.

Submissions

20. Both parties made submissions which were copied to the Tribunal and to the other party.

The Law

21. The law relating to the service and content of Improvement Notices as they relate to a situation where there is a category 1 hazard is set out in Sections 11-13 Housing Act 2004 and appear below:

Section 11 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;

(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.

Section 13 Contents of improvement notices

(1) An improvement notice under section 11 or 12 must comply with the following provisions of this section.

(2) The notice must specify, in relation to the hazard (or each of the hazards) to which it relates—

(a) whether the notice is served under section 11 or 12,

(b) the nature of the hazard and the residential premises on which it exists,

(c) the deficiency giving rise to the hazard,

- (d) the premises in relation to which remedial action is to be taken in respect of the hazard and the nature of that remedial action,
 - (e) the date when the remedial action is to be started (see subsection (3)), and
 - (f) the period within which the remedial action is to be completed or the periods within which each part of it is to be completed.
- (3) The notice may not require any remedial action to be started earlier than the 28th day after that on which the notice is served.
- (4) The notice must contain information about—
- (a) the right of appeal against the decision under Part 3 of Schedule 1, and
 - (b) the period within which an appeal may be made.
- (5) In this Part of this Act “specified premises”, in relation to an improvement notice, means premises specified in the notice, in accordance with subsection (2)(d), as premises in relation to which remedial action is to be taken in respect of the hazard.
22. Section 12 of the Act makes similar provision to Section 11 in relation to category 2 hazards, save that the authority may serve an improvement notice, rather than being under a duty to do so.
23. Section 14 of the Act allows for a suspension of an improvement notice until a time, or the occurrence of an event, specified in the notice.
24. Section 262(7) of the Act defines an owner in relation to the premises as a person... who is for the time being entitled to dispose of the fee simple (the freehold) of the premises whether in possession or in reversion.

Decision

25. The Tribunal reminds itself that it is considering this matter by way of a rehearing and may, if there is such a situation, take into account any factors that have arisen since the notice was issued, or were not apparent to the parties at that time. As the matter is a rehearing the Tribunal has the power to confirm, quash, or vary notice (Schedule 1, paragraph 15 of the Act).
26. The Tribunal is satisfied that the Appellant is a proper recipient of the notice. It also accepts the suspension of the Improvement Notice until the 22nd day after the signing of a tenancy or licence agreement with an occupier or occupation being commenced by an owner-occupier or any other occupier.
27. During its inspection the Tribunal noted the poor thermal construction of the lean-to lobby and its roof covering.
28. The Tribunal confirms the Category 1 hazard of Excess Cold.
29. However, The Tribunal varies the remedial action to be:

Carry out works to the right hand external wall (the extended garden wall) to improve the thermal efficiency of the lobby to comply with the relevant approved documents under the Building regulations.

The roof lights in the lean-to to be replaced with an approved covering in accordance with the relevant approved documents under the Building Regulations including thermal efficiency, leaving all in a sound and watertight condition.

Any replacement units must either be installed by a registered FENSA contractor or another contractor following submission of a building notice to the Building Control Team. On completion a copy of the relevant certificate to be submitted to the Council.

30. Furthermore, the Tribunal noted that only a small area of slipped and uneven slates was apparent at the rear of the property. The Tribunal did not consider that this would provide the likelihood of a hazard within a 12 month period so that part of the Improvement Notice relating to Category Hazard 2 is quashed.
31. The Tribunal confirms the suspension of the Improvement Notice) see paragraph 27. and that works are to be completed within the period of 3 calendar months from the date the suspension of the notice ends.
32. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
33. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
34. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
35. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.

Anthea J Rawlence
Chair