



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

Case reference(s) : **BIR/41UD/HIN/2019/0007 & 8**

Property : **Little Meadow, St Chads Close,
St Chads Road, Lichfield, WS13 7LZ**

Applicant(s) : **Penelope Jane Barber**

Respondent : **Lichfield District Council**

Type of Application(s) : **Appeals against Improvement
Notices under Schedule 1 to the
Housing Act 2004 (“the Act”)**

Tribunal Members : **V Ward BSc (Hons) FRICS
R Chumley - Roberts MCIEH CEnvH,
J.P.**

Date of Decision : **20 September 2019**

DECISION

BACKGROUND

1. On 11 June 2019, Lichfield District Council, the Local Housing Authority and Respondent, served two Improvement Notices on the Applicant, Penelope Jane Barber, in respect of Little Meadow, St. Chads Close, St. Chads Road, Lichfield WS13 7LZ (“the Property”).

2. The first Improvement Notice (“the Fire Improvement Notice”), served under section 11 of the Act, confirmed that the Respondent was satisfied that a Category 1 hazard of Fire existed on the premises.

3. The deficiencies noted were as follows:

There are signs of burn marks on electrical components to do with the incoming supply

An electrical inspection carried out in response to these concerns has confirmed an unsatisfactory wiring installation.

No earthing to the lighting with metal light fittings.

Outside light full of water.

Cooker point and twin socket not working.

No RCD protection for any circuit in the dwelling.

Main earthing conductor requires upgrading.

Clutter prevented further investigation in either bedroom, cannot be done due to problems with accessing sockets, switches etc. Further investigation required.

4. The specification of works to be carried out were as follows:

Full rewire is required

5. The Fire Improvement Notice stated that works specified were suspended, they were to be begun one month after the Property becomes vacant, or, not later, than 10 June 2020 and to be completed within one month.

6. The second Improvement Notice (“the Damp Improvement Notice”), served under section 12 of the Act, confirmed that the Respondent was satisfied that the Category 2 hazard of Damp and Mould existed on the premises.

7. The deficiencies noted were as follows:

The roof leaks into the main bedroom.

A lack of background heating in the bathroom causes the structure to be several degrees colder than the rest of the property. This causes mould to grow and the associated musty smell is apparent.

The dormer window is in a dilapidated (sic) state, rotten (sic) and warped timbers are unlikely to be weather tight.

8. The specification of works to be carried out were as follows:

Thoroughly overhaul, repair and make sound and weatherproof the roof, including the dormer. Replace all missing, damaged and slipped tiles. Rake out and replace all perished pointing to the ridge and perished verge and eaves fillets. Leave the entire roof, including the dormer in a sound and watertight condition.

9. The Damp Improvement Notice stated that works specified were to be begun not later than 5 August 2019 and to be completed within one month.
10. The Applicant appealed to the Tribunal by way of an application form dated 28 June 2019. The Applicant also appealed the fees allied to the Notices in the sum of £390.74.

INSPECTION

11. The Tribunal carried out an inspection of the Property on 5 September 2019. Access was facilitated by Brian Harmon, the tenant. Present at the inspection were Michael Collins, the husband of the Applicant, and Roy Ohren and Jack Twomey representing the Respondent, Lichfield District Council.
12. The Property comprises a single storey dwelling situated off an unmade driveway leading from St. Chads Road, known as St. Chads Close. Information given at the hearing later, indicated that the Property was probably constructed circa 1920 and converted to residential use in 1964.
13. The accommodation offered by the Property is as follows:
- Open hall/kitchen; lounge; two bedrooms, bathroom with full suite incorporating shower over bath.
- Externally there was a garage.
14. The Property is constructed of brick surmounted by a pitched roof with dormer window and a small flat roofed area that abuts the main roof. The dwelling benefits from some double-glazed units and a gas fired heating system. In

addition, there was an electrical down draught "fan" heater and electrical radiant "bar" heater within the bathroom, but no mechanical extract ventilation device in this room

15. The tenant lived in conditions that are best described as cluttered. These conditions limited the inspection the Tribunal could carry out.
16. The Tribunal found that the property was in a generally poor condition given its age and character with evidence of; -

structural cracking to the brickwork over the front entrance door,
structural dampness to the dividing wall between the kitchen and hallway,
rainwater leakage through the main roof, the tiles covering which were loose and uneven at the ridge,
decayed timberwork to the dormer structure on the main roof,

There were numerous (mainly internal) items of disrepair including a broken sealed glazing unit to the rear "patio" door off the lounge and the premises internal arrangement was not ideal as the separating wall between the kitchen and hallway, was not complete.

Specifically, the Tribunal noted that the electrical cables leading to the scorched fuse box component had been cut and it did not appear to be connected to the mains supply.

In addition, the dwelling, which appeared to be a converted garage, was unlikely to have been provided with suitable damp-proof membranes in its floors and damp-proof courses at the base of its walls.

The hearing

17. A hearing was held later the same day at the Tribunal Hearing Rooms, Centre City Tower, Hill Street, Birmingham. Present at the hearing were those who attended the hearing (with the exception of the tenant) and also the Applicant, Penelope Jane Barber.
18. The salient written and oral submissions of the parties are listed below. At the hearing, the Tribunal found it convenient to initially invite the Respondent to present their submissions as to the circumstances that had led to the service of the Notices.

The Respondent's Submissions

19. Submissions on behalf of the Respondent were given by Roy Ohren who had qualified as an Environmental Health technician in 1981 and was employed by the Respondent as a Private Sector Housing Officer. The matter initially came to the notice of the Respondent's Housing department following a referral on 4 March 2019, that originated from Accord Housing Association on behalf of the tenant. The referral made reference to the Property being unfit for human habitation and requested a HHSRS (Housing Health and Safety Rating System) assessment be carried out.
20. An inspection of the Property was carried out by Mr Ohren on 11 March 2019. The dilapidated condition of the dormer window was noted with rotten and warped timbers and additionally the window lacked paint and putty. In respect of the pitched roof, it was noted that the ridge line was uneven and loose tiles were noted and plants needed clearing out of the gutter. A leak into the bedroom was also noted. Within the bathroom were a bar heater and fan heater but no heat emitter which connected with the gas fired heating system. In Mr Ohren's opinion this could lead to condensation and dampness in the bathroom due to the lack of background heat.
21. During the inspection it was noted that a sign had been attached to a component of the fuse box which stated that:

“DO NOT Switch this on. Obsolete fuse box and circuits.”
22. Scorch marks were also noted to one of the fuse box components and when checked with a field tester the results suggested that it was still in use.
23. On 12 March 2019, Mr Ohren contacted Ms Barber advising of the findings of his inspection in general and, in particular, concerns about the electrical installation, including the need for an examination and the associated costs, and the roof. Mr Ohren arranged for an electrical contractor to visit the Property.
24. The subsequent Domestic Visual Condition Report prepared by Darwin Electrical Services and dated by 19/3/19 noted the following Code C2 (“Potentially Dangerous” Urgent remedial action required) items:
 - No earthing to lighting circuit with metal fittings in place.
 - Outside light full of water.
 - No RCD protection to any circuit in the house.
 - Main earthing conductor requires upgrading.
25. The Applicant paid for the cost of the Report.

26. This Report ultimately led to the service of the Fire Improvement Notice on the basis of the Category 1 hazard of Fire based on the HHSRS Hazard Profile No 24.
27. At the hearing the Tribunal led Mr Ohren through the Report and the individual C2 items and asked which items were particularly relevant to Hazard Profile No 24 – Fire. At the end of this discourse, Mr Ohren admitted the defects noted were more relevant to Hazard Profile No 23 – Electrical Hazards.
28. In respect of the roof, there were abortive efforts by Mr Ohren to obtain a report on the same. The following factors were then considered by Mr Ohren:
 - The roof leaks into the bedroom
 - A lack of background heating in the bathroom causes the structure to be several degrees colder than the rest of the Property.
 - A dormer window has been installed in the roof (not counted as a storey due to a lack of a staircase). Its roof appears like it has been recently resurfaced. The sides and window are dilapidated with rotten and warped timbers. There is evidence of recent attempts the flashing watertight (sic) by coating it with a sealant.
29. Following being advised about concerns about the heating to the bathroom, Ms Barber installed a wall mounted electric heater.
30. However, following consideration of all the factors above, the Respondent served the Damp Improvement Notice on the basis of Hazard Profile 1 – Damp and Mould Growth.
31. In respect of the expenses related to the service of the Notices, the Respondent provided details of their charging rates and time sheets in respect of their actions. The charging rate for Mr Ohren was £41.13 per hour and 9.5 hours were charged leading to a total of £390.74 although the time sheets did indicate 11 hours were actually spent on the matter.

The Applicant's Submissions

32. Initially, Ms Barber provided details of her involvement with the Property and, in particular, her involvement with Mr Ohren in 2017 over concerns at that time. In 2017, the evidence showed that Ms Barber cooperated fully with the Respondent and no formal action was taken by the latter. In 2019, Ms Barber again reacted positively when Mr Ohren contacted her. However, the communications were made more difficult by Mr Ohren taking an extended holiday and Ms Barber working overseas. The Applicant was in discussion with the Respondent by email up until 4 April 2019 and then heard nothing until 4

June 2019 and then on 11 June 2019, the Improvement Notices were served. The Applicant could not understand why in 2017 matters had been dealt with informally but in 2019 formal Notices had been served?

33. In respect of the Fire Improvement Notice, Ms Barber stated that the component noted by Mr Ohren with scorch marks had been disconnected sometime before and hence wasn't live. The Tribunal does not need to detail any more of the Applicant's submissions in respect of this Notice.
34. In respect of the Damp Improvement Notice, Ms Barber tried assiduously to obtain from Mr Ohren the details of the roofing contractor he had engaged to provide a report on the roof. The Applicant had also made efforts to deal with the roof leak which had been frustrated by the actions of the tenant however at the hearing she advised that the leak into the bedroom had been dealt with.
35. The tenant has been in occupation since 2015 and the Applicant stated that she has no intention of re-letting the Property in its existing condition to a new tenant. The Applicant confirmed to the Tribunal that she is aware that Property is reaching the end of its useful life and provided evidence that she has been in contact with the planning department of the Respondent regarding redevelopment of the site.
36. The Applicant confirmed that she had served notice to bring the tenancy to an end in November 2019, but in any event, the tenant was due to be rehoused by a social housing provider in September 2019. The Respondent confirmed the latter.
37. In terms of the expenses claimed by the Respondent, the Applicant considered the costs are too high. The Applicant also requested that in the event of her appeals succeeding, that the Tribunal give consideration towards the Respondent reimbursing the Tribunal fees and substantial costs (including legal fees) that had been incurred by her as a result of the unreasonable actions of the Respondent. These amounted to over £6,000 in total.

THE LAW

38. The relevant sections of the Housing Act 2004 are as follows.
39. Following an appeal under Schedule 1 against a decision by a Local Housing Authority to issue an Improvement Notice, the Tribunal may under section 15 (3) of that Schedule:

15 (3) The Tribunal may by order confirm, quash or vary the improvement notice.

DETERMINATION

40. The Tribunal can appreciate the Applicant's confusion as to why in 2017 matters were dealt with relatively informally whilst in 2019, the Respondent moved to issue Improvement Notices after what (for Ms Barber) can only be described as an exasperating period of communication particularly in respect of the reports for the electrical installation and the roof. The Tribunal further accepts that Ms Barber does not intend to continue to let the Property after the current tenant vacates.
41. However, the Respondent has to work on the basis that for some reason either the existing tenancy goes on longer than expected or it is re-let and once the hazards are noted, they have a duty to act (in respect of hazards that they determine as category 1) hence the service of the Improvement Notices.
42. Considering initially the Fire Improvement Notice, the Tribunal noted that the electrical cables leading to the scorched fuse box component had been cut and it did not appear to be connected to the mains supply.
43. In any event, and as admitted by the Respondent at the hearing, the wrong Hazard Profile had been used; Hazard Profile No 24 – Fire whilst the defects noted on the Visual Inspection Report were more relevant to Hazard Profile No 23 – Electrical Hazards.
44. Accordingly, the Tribunal quashes the Fire Improvement Notice.
45. Considering the Damp Improvement Notice, the Tribunal notes and accepts Ms Barber's comments that the leak into the bedroom has been fixed. However, the roof is in need of a complete overhaul if the Property continues to be occupied and hence the Respondent was correct in issuing the Notice. The Tribunal will not therefore quash it but to allow for the existing tenant to vacate, orders that the paragraph 4. of the Damp Improvement Notice be varied to allow the works specified to be started within 6 weeks of the date of this decision and to complete them within 6 weeks. Assuming the tenant vacates, the Applicant will be able to apply to the Respondent to withdraw or suspend the Notice or if necessary substitute it with a Hazard Awareness Notice.
46. In respect of the expenses claimed by the Respondent, the Tribunal considers that the charging rate claimed of £41.13 per hour is reasonable. Discounting the time spent to allow for the actions in respect of the Fire Improvement Notice, the Tribunal allows expenses for five hours therefore £205.65.

47. In terms of the costs claimed by the Applicant, the Tribunal only has limited cost shifting powers which are contained in Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (“the Rules”).
48. If the Applicant wishes to make an application under Rule 13 (1) (a) or (b), she must within the next 14 days provide to the Tribunal and the Respondent Local Authority a written submission setting out the grounds relied upon under Rule 13 and setting out an itemised schedule of costs claimed.

APPEAL

49. A party seeking permission to appeal this decision must make a written application to the Tribunal for permission to appeal. This application must be received by the Tribunal no later than 28 days after this decision is sent to the parties. Further information is contained within Part 6 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (S.I. 2013 No. 1169).

V Ward