



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

Case Reference : **CHI/43UF/HIN/2019/0010**

Property : **Flat 11, Lumley Court, Brighton
Road, Horley, Surrey, RH6 7JE**

Applicant : **Glenpal Limited**

Representative : **Mr William Woods**

Respondent : **Reigate & Banstead Borough
Council**

Representative : **Ms Longley, Senior Housing
Standards Officer**

Type of Application : **Appeal against an Improvement
Notice**

Tribunal Members : **Tribunal Judge I Mohabir
Mr B H R Simms FRICS**

Date of determination : **21 January 2020**

Date of Decision : **21 January 2020**

DECISION

Introduction

1. By an application dated 8 May 2019, the Applicant seeks to appeal an improvement notice made by the Respondent dated 29 April 2019 (“the notice”) in relation to Flat 11, Lumley Court, Brighton Road, Horley, Surrey, RH6 7JE (“the property”).
2. The Applicant is the owner of the property, which is let to a tenant, Mr Rowinski. The property is a second floor, one bedroomed, purpose built flat. It is comprised of a central hallway, a lounge, a kitchen, a bedroom and a combined bathroom.
3. At the request of Mr Rowinski, on 17 April 2019, Ms Longley, a Senior Environmental Health Officer employed by the Respondent, conducted an inspection of the property. She observed that the windows in the property are single glazed wooden casement windows. In the bedroom and on one of the living room windows, a secondary glazing system had been installed, but the frame did not extend over the entire window leading to draughts around the edge.
4. Ms Longley also observed that heat was provided by peak rate electricity by means of wall mounted convector heaters in the lounge and bedroom. Neither had an integral timer although each had a basic thermostatic control. She was of the view that the heater in the lounge did not have sufficient capacity to heat the room. There is a Dimplex down flow heater in the bathroom, which is manually controlled. It has no timer or thermostat. There was no heat source in the kitchen or hallway.
5. Ms Longley concluded that the relevant hazard presented by these matters was one of excess cold under Schedule 1, paragraph 2 of the HHSRS Regulations 2005. She also identified a secondary hazard of damp, which was related to the excess cold.

6. Following the inspection, Ms Lade served the Respondent with the improvement notice. The notice was made pursuant to section 11 of the Housing Act 2004 (“the Act”). It identified the category 1 hazard (excess cold) in Schedule 1 to the notice.
7. Schedule 2 to the notice set out the remedial action the Respondent was required to commence by 29 July and complete by 29 October 2019. These are:
 - (a) to install off-peak storage heaters in the living room and bedroom and down-flow (convector) heaters in the kitchen and bathroom sufficient to maintain the temperature of the property.
 - (b) remedying the draughts around the secondary glazing in the bedroom and living room and installing secondary glazing onto the remaining living room window and kitchen and bathroom windows.
 - (c) to install extractors in the bathroom and kitchen.
8. The grounds on which the Applicant seeks to appeal the notice are:
 - (a) the works required are excessive.
 - (b) the property has an EPC rating of E.
 - (c) when built, the property complied with the relevant Building Regulations.
 - (d) there is no requirement for heating in the hallway because the flat is small.
 - (e) the secondary glazing was installed by a previous owner and did not form part of the original design.
 - (f) the existing heaters function and the works required would impose an unreasonable burden.

Relevant Law

9. Paragraphs 15(2) and (3) in Schedule 1, Part 3 of the Act provides that any appeal against an improvement notice is to be by way of a re-hearing and the Tribunal may by order confirm, quash or vary the notice.
10. No statutory guidance is given in the Act as to how the Tribunal's discretion under paragraph 15 above is to be exercised. However, it is suggested that each case is fact specific and the Tribunal, on balance, must be satisfied, firstly, that the hazard(s) set out in an improvement notice exist and, secondly, have to be addressed by the appropriate remedial works set out in the notice. In doing so, it is further suggested that an appropriate balance has to be struck between the competing interests of the parties.

Decision

11. The Tribunal inspected the property on 23 September 2019. In attendance were the Applicant, Ms Longley and Mr Rowinski.
12. On inspection, the Tribunal found that the Applicant had installed 6 new electric convector heaters, being two in the lounge and one in each of the remaining rooms in the premises including the hallway. Furthermore, the Applicant had installed an extractor fan in the kitchen and bathroom as required by the improvement notice.
13. Ms Longley confirmed that she had not carried out a reassessment of the property to determine whether the excess cold hazard identified in the improvement notice still existed and why in the light of the works carried out by the Applicant. The Tribunal was, therefore, of the view that they could not properly determine the application without the Respondent having carried out this reassessment.
14. Therefore, the Tribunal directed the Respondent to carry out a further HHSRS assessment of the property and to file and serve the revised

assessment and a witness statement setting out if any of deficiencies identified in the improvement notice that give rise to the category 1 hazard of excess cold still exist in the subject property and why. The Tribunal would then determine the application on the basis of the written evidence filed by the parties.

15. Pursuant to the Tribunal's directions, Ms Longley conducted a further HHSRS assessment taking into account the works carried out by the Applicant. In her supplementary witness statement dated 22 October 2019, she stated that rather than installing a heating system which ran on economy 7 or similar low cost tariff, the Applicant had installed Newlec NPLH panel heaters in the lounge, hallway, kitchen, bathroom and bedroom of varying outputs. The all had 24-hour programmable timers and a thermostat.
16. In addition, Ms Longley noted that that although the Applicant had installed extractor fans in the bathroom and kitchen in accordance with the notice, he had not undertaken any works in relation to the condition of the single glazed windows or the secondary glazing units.
17. However, Ms Longley argued that none of the works undertaken by the Applicant was in compliance with the notice. As a consequence, she concluded that whilst the category 1 hazard of excess cold had improved, it had not been entirely removed. She also argued that the cost of providing electricity to heat the property was a relevant consideration under the HHSRS Operating Guidance¹. Furthermore, the Applicant had not provided a calculation of how the replacement heaters would maintain the room temperatures stated in Schedule 2 of the notice.
18. The Tribunal's determination of the application took place on 21 January 2020. As requested by the Tribunal, Ms Longley has helpfully

¹ see: *Liverpool City Council v Kassim* [2012] UKUT 169 (LC)

provided an amended draft improvement notice to reflect the current position. The Tribunal's determination is by reference to the amended Schedule 2 works in this document.

19. It is clear from the amended draft notice that Ms Longley is now of the view that the new heaters have increased the capacity of the heating system and are sufficient to heat the property unlike the previous heaters. In paragraph 1 of Schedule 2 to the amended notice, Ms Longley has proposed that one of the panel heaters in the lounge is replaced with a suitably sized combination storage heater, which can be run on an economy tariff. Her objection now appears to be that the cost of heating the property will *likely* (our emphasis) lead to the heating being used less thereby leaving the flat cold and giving rise to the excess cold hazard.
20. Neither party has provided calculations either for the heat efficiency of the heaters or the cost of electricity to adequately heat the property. Arguably, the saving in electricity cost by replacing just one (albeit larger) heater in the living room was marginal. It is possible that the installation would be complicated in that a separate cable would need to be installed for the economy supply to the storage heater and this would place an additional and unnecessary burden on the Applicant when the cost of adequately heating the property was not known. At best, Ms Longley concluded that this was likely. Therefore, in the absence of clear evidence, the Tribunal did not consider this requirement in paragraph 1 of Schedule 2 was required.
21. Based on its physical inspection of the property the, Tribunal did not consider that the proposed work set out in paragraph 2 in Schedule 2 was necessary, as there is already a suitable proprietary secondary glazing system on the windows in the bedroom and living room windows.

22. As to the requirement to install a proprietary secondary glazing system in the bathroom, kitchen and the remaining living room window, the Tribunal could not properly make a finding that the absence of such a system would result in a lack of heating efficiency. This may well be correct, but the Respondent has not provided any actual evidence of this in this case. The Tribunal's finding cannot be based on an inference in these terms. Therefore, it did not consider that the proposed work in paragraph 3 of Schedule 2 was necessary.

23. Given that the Tribunal has not upheld any of the proposed works set out in Schedule 2 of the draft amended notice, it follows that the initial improvement notice is quashed and the appeal has succeeded. It may be appropriate for the Respondent to proceed by way of a hazard awareness notice because of Ms Longley's existing concerns about the property. Of course, the Respondent should seek its own advice in relation to any further action it proposes to take.

Tribunal Judge I Mohabir

21 January 2020