FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	**:**	**MAN/00BN/HIN/2019/0036**
Property	**:**	**81 Cleveland Road, Manchester, M8 4GT**
Applicant	**:**	**Lowermoor Ltd**
Representative	**:**	**Mr Jacobson of Real Estate Group Ltd**
Respondent	**:**	**Manchester City Council**
Representative	**:**	**Christopher Hixon, Neighbourhood Compliance Officer**
Type of application	**:**	**An appeal against the service of an Improvement Notice and Demand- Sections 11 & Schedule 1, Pt 3 of the Housing Act 2004 [The Act]**
Tribunal member(s)	**:**	**Judge J White** **Valuer J Faulkner**
Venue	**:**	**Northern Residential Property First-tier Tribunal, 1 floor, Piccadilly Exchange, 2 Piccadilly Plaza, Manchester, M1 4AH**
Date of Determination	**:**	**24 February 2020**
Date of decision	**:**	**3 March 2020**

DECISION

The Decision

1. This case arises out of the Applicant's appeal, made on 28 August 2019, against the service of a Notice of Improvement and associated Demand for £300.

2. The Tribunal has determined that the Improvement Notice and Administration expenses of £300 is confirmed.

3. The Applicant must pay £300 to the Respondent within 28 days of this decision; if it has not already so paid.

The Application

4. The Respondent served a Notice of Improvement under s11 and 13 of the Act in relation to hazards under the Housing Health and Safety Rating System dated 25 July 2019 on the Applicant, the owner of 81 Cleveland Road, Manchester M8 6GT ("the Property"). It further served a demand under s49 and 50 of the Act for associated administration expenses of £300.

5. On 28 August 2019 the Applicant made an appeal to the Tribunal against the Notice and Demand.

6. The appeal was under Paragraph 10 of Schedule 1 Housing Act 2004 and was on the general grounds of Paragraph 10(1), submitting that serving a Notice of Improvement was premature as they had recently bought the premises and had already carried out significant improvement works.

7. There was no specific challenge made by the Applicant to the HHSRS (Housing Health & Safety Rating System) calculations, so that it was not necessary for the Tribunal to undertake its own HHSRS (Housing Health & Safety Rating System) calculations.

8. There was no specific challenge made by the Applicant to the finding of a Category 1 Hazard in relation to inadequate fire safety provision or the remedial action required.

Directions

9. Directions were issued on the 24 October 2019 this included for the Applicant to provide their bundle of documents by 14 November 2019. On 6 December the Applicant provided a short letter together with 3 invoices of various works. The Respondent applied for an extension of time and on 10 January 2020 submitted a full bundle together with a witness statement of Christopher Hixon, Neighbourhood Compliance Officer and supporting documents.

10. It decided that there was enough evidence to determine the application without the need for an oral hearing. The Directions stated that it would be appropriate for the matter to be determined by way of a paper determination. Neither party had requested an oral hearing.

11. This determination is made in the light of the documentation submitted in response to those directions and the evidence at the inspection.

Inspection and Description of Property

12. The Tribunal inspected the property on 14 February 2020 at 10.00. Present at that time were Mr Hixon of the Respondent council and Mr Jacobson of Real Estate Group Ltd on behalf of the Applicant.

13. The Property is a four-storey semi-detached house built around 1910 of solid brick walls under pitched roofs covered with slate. The house has been converted into eight self-contained flats, there being two flats on each floor. Access to six of the flats on the upper three floors, numbers 1 -6, is from a communal ground floor entrance to the front with stairs to the upper floors. The two flats in the lower ground floor / basement each have their own separate entrances. The accommodation is arranged as follows:

- Ground Floor: Flat No. 1 to front; Flat No 2 to rear
- First Floor: Flat No. 3 to front; Flat No 4 to rear
- Second Floor: Flat No. 5 to front; Flat No 6 to rear
- Lower Ground Floor / Basement: Flat No. 7 to front; Flat No 8 to rear

14. With the permission of the occupants, the Tribunal were able to gain access to flats 1, 5 and 6. Mr Jacobson showed the Tribunal the unoccupied flat 2 where works were being carried out. Despite flat 7 being unoccupied Mr Jacobson could not find the correct key. The Tribunal noted that Mr Jacobson had also gained access to flat 4 without the permission of the tenant or the tribunal. The Tribunal reminds the Applicant that any unauthorised entry to a tenanted flat is unlawful.

15. The Tribunal noted that in the flats they accessed and in the common parts, the Applicant had fitted hardwired heat detectors and smoke detectors. The heat detectors are interlinked (as they should be) as are the smoke detectors in the common parts but the smoke detectors in the flats are not interlinked.

16. The Tribunal noted that in flats 1 and 2 each entry door was fitted with a combined intumescent and smoke seal strip which, in the case of a fire inside the flat, would prevent the spread of fire and smoke. The doors should be fitted with an intumescent strip only which would prevent the spread of fire but would allow smoke to escape and set-off the linked smoke detector / alarm in the common parts. The Tribunal noted that the access doors to flats 5 and 6 had the correct intumescent strip.

The Law

17. The relevant law is set out in sections 1(4), 5, 11, 28, 49 and Schedules 1 and 3 Housing Act 2004(the Act).

18. The Act introduced a new system for assessing the condition of residential premises operating by reference to the existence of category 1 and category 2 hazards. 19. By reason of Section 1(4), residential premises means a dwelling or any common parts of a building containing one or more flats.

19. Section 2 of the Act defines Category 1 and 2 hazards and provides for regulations for calculating the seriousness of such hazards. A hazard is defined in s. 2(1) as "any risk of harm to the health or safety of an actual or potential occupier of a dwelling which arises from a deficiency in the dwelling (whether the deficiency arises as a result of the construction of any building, an absence of maintenance or repair, or otherwise)."

20. The applicable regulations are the Housing Health and Safety Rating System (England) Regulations 2005 (SI 2005/3208) (the HHSRS). More serious hazards are classed as category 1 hazards, whilst lesser hazards are in category 2.

21. Section 3 of the Act imposes a duty on a local housing authority to keep housing conditions in its area under review. Section 4 imposes a duty on a local housing authority to inspect property in certain circumstances.

22. If on such an inspection the local housing authority considers that a category 1 hazard exists, section 5 imposes a duty to take the appropriate enforcement action. Section 5(2) sets out the various courses of action available to the authority including the service of an Improvement 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. Although a duty is imposed on the authority to take action no timescale is specified in the Act.

23. Section 11 of the Act sets out the statutory provisions regarding Improvement Notices relating to category 1 hazards. Section 13 requires an Improvement Notice to comply with the provisions of that section.

24. The information which must be specified in relation to a hazard includes, by s. 13(2)(b) and (d), "the nature of the hazard and the residential premises on which it exists" and "the premises in relation to which remedial action is to be taken in respect of the hazard and the nature of that remedial action". "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.". By 13(2) (e) it must include "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" and by 13(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."

25. Part 3 of Schedule 1 to the Act provides for appeals against Improvement Notices. Paragraph 10 provides that a person on whom an Improvement Notice is served may appeal against the notice to the first-tier Tribunal (Property Chamber). Paragraph 15(2) provides that the appeal is to be by way of a re-hearing but may be determined having regard to matters of which the authority is unaware. Paragraph 15(3) provides that the Tribunal may by order confirm, quash or vary the Improvement Notice.

26. s49 contains power to charge for certain enforcement action. By "(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"; By "(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. By "(7)Where a tribunal allows an appeal against the underlying notice or order mentioned in subsection (1), it may make such order as it considers appropriate reducing, quashing, or requiring the repayment of, any charge under this section made in respect of the notice or order."

27. Section 9 of the Act provides for the appropriate national authority to give guidance to local housing authorities about exercising their functions under the Act. In particular their functions under chapter 2 of Part 1 of the Act relating to Improvement Notices. Section 9(2) provides that a local housing authority must have regard to any such guidance.

28. The office of the Deputy Prime Minister issued guidance under section 9 relating to Operating Guidance (reference 05HMD0385/A) and Enforcement Guidance (reference 05HMD0385/B).

29. In Sathavahana Vaddaram v East Lindsey District Council [2012] UKUT 194 (LC) AJ Trott FRICS: In granting permission to appeal on 29 August 2011 the President made the following observations:
"The LACORS guidance is clearly important and ought to be given great weight in a case such as this."

"*63. The compliance of the windows at Flat 23B with Approved Document B1 of the Building Regulations is a matter to which I attach significant weight. The LACORS guidance states in terms that it does not apply to properties converted to a standard in compliance with the Building Regulations. The appellant argues that notwithstanding this statement LACORS should be treated as a guide to best practice. The respondent suggested that the property had significantly deteriorated and asserted that a "LD2 Grade A" fire alarm system had been removed. (No evidence of such removal has been submitted to this Tribunal). The council referred to and relied upon LACORS in its submitted documents. In my opinion the LACORS guidance is a relevant consideration in this appeal."*

30. In Hanley v Tameside Metropolitan Borough Council [2010] UKUT 351(LC), His Honour Judge Mole said at [25]:

"I return to those matters that are of central relevance to this appeal. Firstly, in paragraph 23 of the decision the RPT says that where a hazard has been identified under the provisions of the Housing Act 2004, compliance with the Building Regulations is not a material consideration. I have no doubt that, stated thus bluntly, that is an error of law. It must be a "material consideration" whether something that is said to be a hazard either complies with the Building Regulations or might, without too much trouble, be made to comply with the Building Regulations. It is evident from the HHSRS Operating Guidance that in many instances (hazards on stairs for example; see paragraph 21.29) the Building Regulations are directly relevant. Of course, the fact that a situation that is described as a hazard nonetheless complies with the Building Regulations does not mean that it cannot be a hazard. It is possible for a hazard under the Housing Act and HHSRS Regulations to comply with the Building Regulations, yet still be a hazard. It may be that this is all the RPT intended to convey and of course the words must be read in the context of the whole paragraph. But, as Mr Hanley fairly submitted, if that is what the RPT meant, it was certainly not what it said. Compliance with the Building Regulations, in my view, is plainly a material consideration that the Tribunal must bear in mind."

31. It follows from the above guidance that once a local authority properly assesses there to be a Category 1 hazard by reason of fire, the Tribunal must give great weight to the LACORS guidance and a material consideration will be compliance with the Building Regulations. LACORS Guidance 9.7 In all buildings a fully protected escape route (staircase) offering 30 minutes fire resistance is the ideal solution and it will usually be appropriate for all accommodation of this type.

32. LACORS guidance 21.3 "*In most situations fire-resisting doors should be fitted with smoke seals, as these restrict the passage of smoke into the escape route from the room where the fire is situated. The exception to this is where fire doors are fitted to rooms in premises where the fire detection system is restricted to the escape route*" (see paragraph 22.11/table C3). In these cases, "*smoke seals should not be fitted, as their benefit will be outweighed by the fact that the smoke detectors in the escape route will only activate when the fire is at an advanced stage and beginning to breach the fire door. The resulting alarm may be so late sounding that the fire and smoke is already affecting the escape route*"

33. 22.3 "*The type of [detector] system installed should be in accordance with the recommendations of BS 5839: part 6*". This details different grades of system and extent of coverage and recommends an appropriate system based on the risk the premises presents. "*Relatively simple systems will be satisfactory for smaller, low-risk premises, but larger houses will require a more sophisticated automatic system. In blocks of self-contained flats then a mixed system is usually recommended, where the escape routes and common parts are protected by an interlinked system of alarms or*

detectors and the individual units have a separate stand-alone system to alert a sleeping occupant of fire in their own unit of accommodation. This has the benefit of reducing nuisance/false alarms throughout the whole property caused by activities such as cooking within any one unit".

34. Table C4: sets out recommended grade and coverage of automatic fire detection and warning system for various categories of existing residential premises (normal risk). "*Three- to six-storey house converted to self-contained flats (prior to Building Regulations 1991, approved document B standard) heat detector in each flat in the room/lobby opening onto the escape route (interlinked) smoke alarm in the room/lobby opening onto the escape route) to protect the sleeping occupants*."

35. Building Regulations 2010 Section 1: Fire detection and fire alarm systems B1 1.7 states a large dwellinghouse of 3 or more storeys (excluding basement storeys) should be fitted with a Grade A Category LD2 system as described in BS 58396:2004, with detectors sited in accordance with the recommendations of BS 5839-1:2002 for a Category L2 system.

The Findings

36. On 1 October 2018 the occupier of flat 5 made a complaint to the Respondent about the lack of light and smoke detection in the common parts. An inspection was carried out and notice was served in relation to a number of hazards. On the 20th of March 2019 ownership of the property transferred to the applicant. The Applicant would have received notification of the hazard as part of the conveyance. On the 15th of April 2019 the Respondent emailed the applicants agents with a copy of the notice. On 18 April they telephoned the agents who requested an inspection. A formal Notice of Entry was served on the Applicant. On the 30th of April 2019 the Respondent inspected the property. At that inspection the Respondent again raised the outstanding works with the agent.

37. The Applicant has submitted a number of invoices showing miscellaneous works undertaken by the Applicant's. None specifically refer to remedy of the fire safety apart from 2 standalone detectors. On 8 July 2019 The Respondent telephoned the complainant who stated that, apart from a new boiler, no other works had been undertaken. The thermostat on the boiler had subsequently broken. On the 19 of July 2019 a Notification of inspection was sent to the applicant, its agent, and occupiers of the flats within the property. An inspection was carried out on the 24th of July 2019.

38. On the 25th of July 2019 the Improvement Notice was served in relation to this appeal in relation to the category 1 hazard set out above together with a demand for payment was made to the sum of £300. Deficiencies set out in Schedule 2 of the Notice were specified as "*inadequate fire safety provision*". Remedial action required was to engage a competent person to install a fire detection and alarm system in accordance with current Local Authorities Coordinators of Regulatory Service (LACORS) guidance for a 4 storey building converted into flats and ensure there is at least 30 minute

fire separation between flats and in the common parts. On the same day a separate notice was served in relation to a number of category 2 hazards. That Notice is not the subject of this appeal.

39. On the 11th of August 2019 a certificate of installation showed that a BS5839 dash 6: 2004 alarm sense fire alarm and detection warning system had been installed that day. On the 15 January 2020 a further inspection was carried out by the Respondent.

The Determination

40. The Improvement Notice was valid in its timing and content and is confirmed.

41. The Respondent had a duty under s3 of the Act to inspect the premises following a complaint. As a category 1 hazard existed it also had a duty to take the appropriate enforcement action. An Improvement Notice was a course of action open to them in accordance with s5(2) and s11(1). Although no timescale is specified in the Act, the degree of risk to the occupants and notice to the Applicant of around 3 months was a reasonable timescale. The Applicants, through its agent had notice in April 2019 by email, phone call and joint site visit. The service of the notice was not premature.

42. The Respondent were required to specify the remedial action required to remedy category 1 hazards in accordance with S11 of the Act. It did so. The remedial action specified, in relation to the category 1 hazard, is action which, in the opinion of the local housing authority, will remove or reduce the hazard in accordance with 14. (8). The action specified was open to the Respondent. It properly followed the guidance set out above.

43. The Notice complied with the provisions of s13 in terms of the nature of the hazard, the deficiency, the premises, the dates and Information in relation to appeal rights. The Notice was dated 25 July 2019. The notice gave the requisite 28 days for work to start; stating that work must begin on 29 August 2019 and be completed within 14 days.

44. The tribunal confirms the Improvement Notice dated 25 July 2019 in accordance with Part 3 of Schedule 1 to the Act Paragraph 15(3).

45. The Respondent was entitled to charge reasonable administration and other expenses incurred by them when serving a notice as contained in s49. The demand was made in accordance with s50. Though the amount of £300 is not supported by other evidence it is found to be a reasonable administration expense taking account of the likely work involved. This included various phone calls, emails, inspections and preparation of Notices.

46. The Tribunal requires the Applicant to repay to the Respondent the £300 charged in respect of the Notice within 28 days of the date this decision, if it has not already so paid.

Conclusion

47. The appeal therefore fails

Cost applications

48. There were no cost applications and we found no grounds to make an order for costs.

Judge J White
3 March 2020

RIGHTS OF APPEAL

1. 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.

2. 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.

3. 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.

4. 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.