FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**BIR/00CN/HIN/2019/0024**
Property	**:**	**65 Northfield Road, Harborne, Birmingham, B17 0ST**
Applicant	**:**	**Mr Haroon Mohammed**
Respondent	**:**	**Birmingham City Council**
Type of Application	**:**	**An appeal against an Improvement Notice under paragraph 10 (1) of Schedule 1 to the Housing Act 2004**
Tribunal Members	**:**	**Judge M K Gandham** **Judge D Barlow** **Mr P J Wilson BSc (Hons) LLB MCIEH MRICS**
Date and venue of Hearing	**:**	**Paper Determination on 25th March 2020**
Date of Decision	**:**	**14 April 2020**

DECISION

Decision

1. The Tribunal finds that the Improvement Notice was defective and orders that it and the Demand for Payment, both dated 29th October 2019, be quashed.

Reasons for Decision

Introduction

2. On 21st November 2019, the First-tier Tribunal (Property Chamber) received an application from Mr Mohammed ('the Applicant') for appeals under paragraph 10 of Schedule 1 and paragraph 11 of Schedule 3 to the Housing Act 2004 ('the Act'). The appeals related to an improvement notice dated 29th October 2019 ('the Improvement Notice') and an associated Demand for Payment ('the Demand for Payment'), served upon him by Birmingham City Council ('the Respondent') relating to the property known as 65 Northfield Road, Harborne, Birmingham, B17 0ST ('the Property'), of which the Applicant is the freeholder.

3. The Improvement Notice was served on both the Applicant and Dwellings (the letting agent for the Property) and detailed, in the Schedule to the Notice, various defects at the Property. These defects were categorised as category 1 hazards in respect of 'Damp and mould growth' and 'Falling on stairs etc…'. The Respondent served, with the Improvement Notice, a Statement of Reasons as to why the decision to take enforcement action had been taken and the Demand for Payment, demanding a sum of £304.80 in respect of the Respondent's costs for serving the Improvement Notice.

4. The Tribunal issued Directions on 26th November 2019 and, in accordance with those Directions, the Respondent provided a Statement of Case and bundle on 20th December 2019. A Statement of Case and bundle, setting out the Applicant's case, was received by the Tribunal on 24th January 2020 and a Witness Statement from Mr Dieng was received on 3rd February 2020.

5. On 17th March 2020, the Tribunal confirmed that it would not be carrying out an inspection of the Property and photographs of the Property were supplied by the Applicant on 18th March 2020. In accordance with the Tribunal's further directions issued on 18th March 2020, the Respondent provided a Statement of Service.

6. Neither party requested an oral hearing.

The Law

7. The Act introduced a new system for the assessment of housing conditions and for the enforcement of housing standards. The Housing Health and Safety Rating System (the 'HHSRS') replaces the system imposed by the Housing Act 1985, which was based upon the concept of unfitness.

8. Where the application of the HHSRS identifies a category 1 hazard, the local housing authority has a duty, under section 5(1) of the Act, to take appropriate enforcement action. Section 5(2) sets out the courses of action (which include the serving of an improvement notice) which may constitute appropriate enforcement action.

9. Section 13 of the Act confirms what information must be specified in an improvement notice. Section 13(3) states:

> "*The notice may not require any remedial action to be started earlier than the 28th day after that on which the notice is served.*"

And section 13(4) states:

"*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."

10. Section 49 of the Act confirms that a local housing authority may recover expenses relating to enforcement action and section 49 (1) states:

> *"(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;"*

11. The person upon whom an improvement notice is served may appeal to the First-tier Tribunal (Property Chamber) under paragraph 10 of Schedule 1 to the Act. Paragraph 14(1) of Schedule 1 to the Act states:

> "*Any appeal under paragraph 10 must be made within the period of 21 days beginning with the date on which the improvement notice was served in accordance with Part 1 of this Schedule.*"

12. The person upon whom a demand for expenses is served may appeal to the First-tier Tribunal (Property Chamber) under paragraph 11 of Schedule 3 to the Act.

13. In respect of both appeals, the Tribunal may confirm, quash or vary the notice and/or demand.

Submissions

14. The Applicant submitted that he had already carried out much of the work included in the Improvement Notice and supplied photographs detailing the same. In his statement, he submitted that the Respondent was aware that the water penetration at the Property was from a leak in the roof and that this would naturally cause damp and mould. He stated that, in order to rectify the situation, replacement of the roof covering was required and that the tenants needed to vacate the Property for the work to be completed, as their occupation of the property during works to replace the roof covering would be a health and safety risk. He stated that he had served a section 21 notice against the tenant and that an Order for possession had been granted to him on 6th January 2020.

15. The Applicant provided within his bundle a copy of a witness statement from Mr Dieng, the former tenant, confirming that the minor works to the Property had been carried out on 7th December 2019 and that the only work remaining was for a replacement of the roof. He also provided witness statements from a builder who had carried out some work at the Property; a damp specialist at Pass & Co, who stated that the damp and mould issues were due to the leak in the roof and could not be dealt with until the roof had been replaced, and a roofing expert, who stated that the Property had to be vacated in order for scaffolding to be put in place. In addition, the Applicant provided copy correspondence between himself and the Respondent prior to the Improvement Notice being issued, confirming that he required the Property to be vacated to be able to replace the roof and that he had made an application to the Court for the same.

16. Ms Crawford, an Environmental Health Officer employed by the Respondent, provided a Statement of Case on behalf of the Respondent. She stated that, after correspondence between the Private Rented Services Department of the Respondent and the Applicant, regarding defects at the Property, the case was allocated to her on 11th October 2019. She stated that she wrote to the Applicant to confirm that she would be carrying out an inspection to see if suitable works had been carried out to remedy the defects the Property. She acknowledged that the Applicant had stated that he was going through the court process to obtain vacant possession of the Property but stated that she had confirmed to the Appellant that it was the Respondent's position that the roof works could be carried out whilst the tenants were in occupation.

17. Ms Crawford stated that she carried out an inspection of the Property on 22nd October 2019 and that the state and condition of the Property was assessed with reference to the HHSRS. She provided, within the bundle, a copy of her inspection notes and photographs. She considered category 1 hazards existed in respect of 'Damp and mould growth' and 'Falling on stairs etc…' and that she considered that the issuing of an improvement notice was the most appropriate course of action.

18. Within the bundle, the Respondent had provided a copy of a statement from a Contract Team Manager, employed by the Respondent, who confirmed that the Respondent replaced around 400 pitched roofs each year and that he could not recall any issue which would have involved moving a resident out of a property to facilitate works.

19. Ms Crawford also provided a Statement of Service, in which she confirmed that she had served the Improvement Notice with a covering letter, also dated 29th October 2019, on the Applicant and Dwellings. She confirmed that service was by way of prepaid first class post.

The Tribunal's Deliberations

20. The Tribunal considered all of the evidence submitted by the parties written and summarised above.

21. The Improvement Notice, which is dated 29th October 2019, and addressed to the Applicant provides:

> "*1. You are the person in control of the residential premises know* (sic) *as 65 NORTHFIELD ROAD, HARBORNE, BIRMINGHAM, B17 0ST ("the premises").*
>
> *2. Birmingham City Council ("the Council") is satisfied that both Category 1 hazards exist on the Premises as set out in Schedule 1 to this Notice. The Council is required to take appropriate enforcement action under Section 5 of the Housing Act 2004 ("the Act") with respect to Category 1 hazards. The Council is further satisfied that no Management Order is in force in relation to the Premises under Chapter 1 or 2 of Part 4 of the Act.*
>
> *3. In the opinion of the Council, the remedial action specified in Schedule 1 to this Notice will remove or reduce the hazards.*
>
> *4. Under section 11 of the Act, the Council hereby requires you to carry out such remedial action as is specified in Schedule 1 with respect to the Category 1 hazards which exist at the Premises.*
>
> *5. Such remedial action must be started by the dates and completed within the periods specified in Schedule 1.*
>
> *6. If you do not agree with this notice, you may appeal against it to the Residential Property Tribunal and you must do this within 28 days from the date this notice was served on you. (See attached notes for further details)."*

Schedule 1 of the Improvement Notice details, in respect of each of the two hazards identified: the nature of the hazard, the deficiency giving rise to the hazard and the remedial action to be carried out. In respect of each

hazard it states:

> "*The remedial action specified above must be started by* ***26th November 2019*** *and completed by* ***19th December 2019***."

22. The Tribunal notes that the Applicant has not disputed that the works detailed on the Improvement Notice were required and that he had, in fact, completed some of the minor works prior to making his application to the Tribunal. The Tribunal does not, in its expert opinion, consider that replacing a roof covering would necessarily require a property to be vacated but it is also of the opinion that the time frame given by the Respondent was wholly insufficient for quotes to be obtained and for works to have been completed.

23. However, the Tribunal notes that there is a more fundamental error in the dates given for the remedial action to be taken. Subsection 13(3) of the Act provides that a notice "*may not require any remedial action to be started earlier than the 28th day after that on which the notice is served.*"

24. The Statement of Service received from the Respondent confirms that the Improvement Notice and covering letter were both dated 29th October 2019. The Improvement Notice was then served by sending it to the Applicant by prepaid first class post. The date specified on the Notice for the works to be started was 26th November 2019 – a date which is exactly 28 days after the *date* of the Notice. As the Notice was only posted on 29th October, not *served* on that date, the date for the commencement of the remedial action specified on the Notice was too short.

25. In *Isaac Odeniran v Southend on Sea Borough Council* [2013] EWHC 3888 (Admin) ('*Odeniran*'), the High Court considered the wording of section 13(3) of the Act. This was an appeal by way of case stated against a decision of the justices for the county of Essex sitting at Southend whereby they convicted the appellant of an offence relating to his failure to comply with an improvement notice. The notice provided:

> "*Under section 12(2) of the Housing Act 2004, the Council requires you to carry out the works specified in the schedule attached to this Notice and to begin them not later than the 3rd day of May 2011 (being not less than 28 days from the date of this Notice) and to complete them by the 31st July 2011.*"

26. Accordingly, the notice purported to require that the remedial work be commenced within 28 days of the date of the notice, not of the date of service of the notice. The notice had been served by post and service was deemed to have taken place on the second working day after posting. It followed from this that the 28-day period would have commenced not on 3rd May (28 days after the date of the notice) but on 5th May (28 days after service).

27. Mr Justice Collins stated at [5] to [6] of his judgment:

> *"5. … the question that matters is whether they were correct in finding that the improvement notice was not invalid when it specified a commencement date for remedial action less than 28 days from the date of its service.*
>
> *6. In my view, they were not correct in so finding. The notice was clearly a defective notice, having regard to the mandatory terms of section 13(3)."*

28. The Tribunal notes that, in finding that the notice was clearly a defective notice having regard to the mandatory terms of section 13(3) of the Act, Mr Justice Collins referred solely to the wording of the section and did not seek to limit his judgment to the specific facts of the case before him.

29. In this matter, the starting date detailed for any remedial action should have been no sooner than 28th November 2019 – 28 days after the second working day after posting. Consequently, the Improvement Notice, as in *Odeniran*, was defective.

30. In addition, under section 13(4) of the Act, the Improvement Notice had to contain information pertaining to the right to appeal and, importantly, the period within which an appeal could be made. Although the Improvement Notice contained information regarding the right to appeal, it stated that the period in which the appeal could be made was "*28 days*" from the date of service. Under paragraph 14 of Schedule 1 to the Act, the period within which an appeal can be made is *21 days* beginning with the date of service.

31. Following the rationale in the *Odeniran* decision, as section 13(4) also details mandatory terms, the failure of the Respondent to detail the correct period within which the appeal must be made, also rendered the Improvement Notice defective. Although the Improvement Notice referred to accompanying notes, in which the correct information was contained, in the Tribunal's opinion, this would not have been able to rectify a defective notice.

32. The Tribunal, therefore, orders that the Improvement Notice be quashed.

33. In relation to the Demand for Payment, section 49 of the Act allows a local housing authority to make a reasonable charge for recovering certain administrative and other expenses incurred by them in serving an improvement notice. In this matter, as the Improvement Notice was defective, the Tribunal considers that the Respondent should not be able to make a charge for the same.

34. As such, the Tribunal orders that the Demand for Payment also be quashed.

Appeal

35. If either party is dissatisfied with this decision they may apply to this Tribunal for permission to appeal to the Upper tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to the parties (rule 52 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013).

M. K. GANDHAM
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Judge M. K. Gandham