



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

**Case Reference** : **MAN/00BR/HIN/2019/0049**

**Property** : **12, Tramway Road, Irlam, Salford  
M44 5BH**

**Applicant** : **Mr. Robert Copsey**

**Respondent** : **Salford City Council**

**Type of  
Application** : **Appeal against an improvement notice –  
Schedule 1, Housing Act 2004**

**Tribunal  
Members** : **Tribunal Judge C Wood  
Mr. I James**

**Date of Decision** : **22 April 2020**

**Date of  
Determination** : **28 April 2020**

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**DECISION**

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## **Order**

1. In accordance with paragraph 15(3) of Schedule 1 to the Housing Act 2004, the Tribunal orders that the improvement notice dated 10 October 2019, (“the Improvement Notice”), (insofar as it has not been revoked by the revocation notice dated 25 February 2020) is quashed.
2. Pursuant to section 49(7) of the Act, the Tribunal orders the Applicant to pay to the Respondent the sum of £350.20 in respect of certain administration and other expenses incurred by the Respondent in connection with the preparation and service of the Improvement Notice.
3. The Tribunal invites the Applicant to make written representations under Rule 13(6) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013, (“the Rules”) within 14 days of the date of this Order regarding the Tribunal’s exercise of its power to make an order for costs against the Applicant pursuant to Rule 13(b) of the Rules.

## **Background**

3. By an application dated 30 October 2019, (“the Application”), the Applicant appealed against the Improvement Notice under paragraph 10 of Schedule 1 to the Housing Act 2004, (“the Act”).
4. Directions dated 23 January 2020 were issued pursuant to which both parties submitted written representations.
5. Following an inspection of the Property by the Respondent on 21 February 2020, the Respondent issued a revocation notice dated 25 February 2020 of the Improvement Notice, (“the Revocation Notice”), in respect of the deficiencies numbered 001 paragraphs 2),3) and 4) and 002 by reason of compliance with the requirements related to the hazards.
6. The Application, (as amended by the Revocation Notice), was scheduled for determination on the papers on Friday 17 April 2020, following an inspection of the Property on the same date.

## **The Law**

7. The Act introduced a new system, the Housing Health and Safety Rating System (HHSRS), for assessing the condition of residential premises, which can be used in the enforcement of housing standards. The system entails identifying specified hazards and calculating their seriousness as a numerical score by a prescribed method.
8. Hazards are categorised as Category 1 and Category 2 hazards.

9. Section 7(2) of the Act sets out five types of enforcement action which a local authority may take in respect of a category 2 hazard. If two or more courses of action are available, the authority must take the course which they consider to be the most appropriate. One of these is an improvement notice.
10. An improvement notice 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: section 12(2).
11. The person on whom an improvement notice is served may appeal to the Tribunal against an improvement notice (Schedule 1, para.10(1) of the Act).
12. Paragraph 15(2) of Schedule 1 provides that the appeal is by way of a re-hearing, (para. 15(2)(a)), but may be determined having regard to matters of which the authority were unaware, (para. 15(2)(b)).
13. The Tribunal may confirm, quash or vary the improvement notice (para. 15(3)).

### **Inspection**

14. The Tribunal made an external inspection of the Property on Friday 17 April 2020. Neither of the parties attended the inspection.
15. It was apparent from the inspection that the chimney stack to the front of the Property has been removed and necessary associated works to the roof carried out. It was unclear by whom the works had been carried out although it was also apparent from the scaffolding erected on No. 10, Tramway Road, the adjoining terraced property, (“No.10”), that significant works were being carried out to this property.
16. The Tribunal made an external inspection of the rear of the Property from which it was seen that the rear chimney stack remains in place. The Tribunal noted that this was not the subject of the Improvement Notice but also noted that this chimney stack appeared to be in satisfactory condition.

### **Evidence**

17. The Applicant’s grounds of appeal as set out in the Application and the Applicant’s statement of reasons for the appeal are as follows:
  - 17.1 the circumstances and timeline of events made impossible completion of the required works before service of the Improvement Notice;
  - 17.2 the Applicant was misled by the Respondent’s case officer; and,
  - 17.3 the Improvement Notice contains an untrue statement.
18. In his statement, the Applicant refers to the following:
  - 18.1 protracted discussions with the Respondent concerning the need to carry out repairs to the chimney stack;

- 18.2 arrangements for these works to be carried out in August 2019, and the reasons for the delays in the works being completed including, in particular, the need for, and difficulties in obtaining, consent from the owner of No.10;
- 18.3 an agreement reached with the new owner of No.10 for the new owner to take down the chimney stack as part of other planned works to that property. In the undated statement, the Applicant says, "...his builder will be completing the work imminently";
- 18.4 his belief that he has done "the right thing, in waiting to ensure that the work is carried out legally and to the best possible standard".
19. In the Respondent's grounds for opposing the Application and in the full statement of reasons, the Respondent sets out the following:
- 19.1 a detailed chronology of the sequence of events from 22 January 2019, (when the initial referral regarding the condition of the Property was made to the Respondent) to the issue of the Improvement Notice dated 10 October 2019, including:
- (i) visits to the Property by the Respondent's case officer on 28 March 2019, 26 June 2019 and 9 August 2019 (following section 239 letters);
  - (ii) a summary of the requirements to be set out in the proposed improvement notice and a written request for the Applicant's representations on 1 May 2019, (re-sent by e-mail on 28 June 2019, at the Applicant's request);
  - (iii) telephone calls from/to the Applicant on 26 March 2019 and 28 June 2019, and an e-mail from the Applicant dated 31 July 2019;
- 19.2 a detailed chronology of events following the issue of the Improvement Notice including:
- (i) telephone call with the Applicant on 18 October 2019 in which he expressed his dissatisfaction with the Respondent's action in issuing the Improvement Notice;
  - (ii) further inspection of the Property on 21 February 2020; and
  - (iii) issue of Revocation Notice on 25 February 2020.
- 19.3 In response to the Applicant's three grounds of appeal, the Respondent states as follows:
- (i) a period of 6.5 months elapsed between the Applicant being advised of the works required at the Property and the issue of the Improvement Notice;
  - (ii) from the outset of discussions, the Applicant acknowledged that repairs were required to the chimney stack. It was only after the issue of the Improvement Notice that the Applicant informed the Respondent of the need for more extensive works to the chimney stack than those set out in the Improvement Notice i.e. to drop the chimney stack completely;
  - (iii) in this respect, the Respondent confirms that if the chimney stack was removed and a new roof fitted, this would be acceptable by the occupant as rectifying the hazard;
  - (iv) both the tenant of the Property and the Respondent were able to make contact with the owner of No.10, and the Respondent provided the Applicant with the written consent to the works being carried out obtained by his tenant;

- (iv) despite being advised in May 2019 of the works required, the Applicant did not seek any amendments to the works or provide any contractors' reports confirming the works required. It was only following the issue of the Improvement Notice that the Applicant asserted that more extensive works than those required under the Improvement Notice were required;
  - (v) the suggestion that the Applicant has been misled by the Respondent regarding the lack of urgency in effecting the works is denied, although it is accepted that the Respondent agreed that the chimney stack repairs could await the hopefully more clement spring weather i.e. a delay of a month or so;
  - (vi) the Applicant has not identified that statement in the Improvement Notice which he alleges to be untrue, but the Respondent denies that any statements in the Improvement Notice are untrue.
- 19.4 whilst the Respondent asserts that it was appropriate to issue the Improvement Notice in the form and content as issued at the time, subsequent events as identified at the inspection on 21 February 2020, namely the undertaking of certain repairs by the Applicant, obliged the Respondent to issue the Revocation Notice.

### **Reasons**

- 20. Due to the issue of the Revocation Notice prior to the date scheduled for determination of this matter, (17 April 2020), the Tribunal's determination is limited to the Applicant's appeal against the Improvement Notice insofar as it relates to the works required to the chimney stack.
- 21. The Tribunal noted that in the Application the Applicant has not challenged the Respondent's assessment of the hazards at the Property, or the appropriateness of the Respondent's choice of enforcement action nor raised any questions regarding the Respondent's compliance with the procedural requirements relating to the issue of an improvement notice.
- 22. With regard to the Applicant's grounds of appeal as set out in his statement (and summarised in paragraph 17 of this Decision), the Tribunal determines as follows:
  - 22.1 there is no evidence that the Applicant had insufficient time to complete the repairs to the chimney stack, or that circumstances made it impossible for him to do so. Specifically, the Tribunal notes as follows:
    - (i) it is clear that the Applicant was aware that repairs were required to the chimney stack when he was first contacted by the Respondent in March 2019. It is not clear to the Tribunal why it took the Applicant until 4 August 2019 to arrange for a building contractor to attend at the Property. It is also unclear why it then took until 19 October 2019 for that contractor to confirm the extent of the repairs required. The Tribunal considers that the Respondent allowed the Applicant more than adequate time to carry out the works before the Improvement Notice was issued;

- (ii) the Tribunal is not persuaded that the Applicant was prevented from carrying out the repairs because of any difficulties in getting the consent of the owner of No.10. The Tribunal is satisfied that both the tenant and the Respondent had managed to make contact with the owner. The Tribunal has some sympathy with the Applicant's reservations regarding acting upon the letter of consent obtained by the tenant and/or the Respondent's confirmation of oral consent. However, it was the Applicant's responsibility to obtain consent to carry out the works. If the Respondent did offer to make some enquiries to assist the Applicant in this respect, this did not discharge the Applicant from this responsibility. The Applicant has not provided any evidence of any attempts by him to contact the owner of No. 10 or to follow up the Respondent's offer to make enquiries for him;
- 22.2 the Applicant has not provided any evidence to support his assertion that he was misled by the Respondent's case officer into believing that there was no urgency in effecting the required repairs. The Tribunal notes the Applicant's failure to engage with the Respondent in any meaningful way during the period from March – October 2019, e.g. the Applicant did not attend the inspections of the Property on 28 March 2019, 26 June 2019 and 9 August 2019 despite being given notification of the same; the Applicant did not submit any representations in response to the Respondent's invitation to do so in May 2019, and again in June 2019 when the invitation was re-sent to the Applicant at his request. The Tribunal further notes that such meaningful engagement only occurred once the Improvement Notice had been issued;
- 22.3 there is no evidence to support the Applicant's claim that he was misled by the Respondent;
- 22.4 the Applicant has failed to particularise his claim that there is an untrue statement in the Improvement Notice. The Tribunal dismisses the ground of appeal accordingly.
23. The Tribunal is satisfied that the Respondent acted appropriately in its choice of enforcement action with regard to the defective chimney stack, and that it had complied with the statutory requirements in relation to the issue and service of the Improvement Notice.
24. In the Applicant's statement, he refers to an agreement having been reached with the new owner of No.10 that the chimney stack will be taken down. The Tribunal notes the Respondent's statement that to do so, although more extensive than the works required under the Improvement Notice, would be satisfactory to the tenant in remedying the hazard. It is clear from the Tribunal's inspection that the chimney stack to the front of the Property has been removed and some re-roofing undertaken, (although not the complete re-roofing suggested by the Applicant in his statement).

25. It is not clear to the Tribunal why the Applicant has not informed the Tribunal and/or the Respondent of the undertaking of these works. The Tribunal notes that, if the Applicant had advised the Respondent of the works, subject to its satisfaction that the requirements of the Improvement Notice had been complied with, under section 16(1) of the Act, the Respondent would have been obliged to issue a further revocation notice. Based on its inspection, the Tribunal is satisfied that these works effectively remove the hazard identified in the Improvement Notice.
26. Without prejudice to the Tribunal's determination that, as at the date of its issue, the Respondent acted appropriately in issuing the Improvement Notice, as a result of the works having been undertaken, the likelihood of revocation of the Improvement Notice if this had been made known to the Respondent by the Applicant, and the Tribunal's satisfaction that the works were effective to remove the hazard, it orders that the Improvement Notice is quashed.
27. Having regard to its determination that the Respondent acted appropriately in issuing the Improvement Notice, the Tribunal considers it appropriate to make an order pursuant to section 49(7) of the Act requiring the Applicant to make payment of the Respondent's reasonable charges in relation to the preparation and service of the Improvement Notice. The Tribunal notes that the Respondent has indicated that these costs are in the sum of £350.20, which the Tribunal confirms is a reasonable charge.
28. The Tribunal is concerned by the Applicant's failure to engage with the Respondent throughout this matter and, in respect of the Application, by his failure to fully engage with the Tribunal. In particular, the Tribunal is concerned by the Applicant's failure to notify the Respondent and the Tribunal of the works to the chimney stack. If he had done so, it appears reasonable to assume that a Tribunal determination of the Application could have been avoided. Further, it is possible that costs incurred by the Respondent in preparing for the Tribunal's determination could have been avoided.
29. In the circumstances the Tribunal is minded to make a costs order against the Applicant pursuant to Rule 13(1)(b) of the Rules on the basis that the Applicant has acted unreasonably in conducting the Application, namely, the Applicant's failure to notify the Respondent and the Tribunal of the works undertaken to the chimney stack at the Property.
30. In accordance with Rule 13(6), the Tribunal must not make any such order without first giving the Applicant to make representations. The Tribunal considers that the Applicant should be given 14 days from the date of this Decision to make such representations.